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## ICELANDIC LAW

By

LESTER B. ORFIELD\*

Because of its connection with Norway from its first settlement in 874 up to 1814 and because of its connection with Denmark from 1380 to 1944 Iceland is of peculiar interest to all Scandinavians.<sup>1</sup> As Arnold J. Toynbee has so beautifully phrased it, "the finest flowering of an oversea Scandinavian polity was the republic of Iceland, founded on the apparently unpromising soil of an Arctic island, five hundred miles away from the nearest Scandinavian *point d'appui* in the Faroe Islands."<sup>2</sup> The same author states that "it was in Iceland, and not in Norway, Sweden or Denmark, that the abortive Scandinavian Civilization achieved its greatest triumphs in literature and in politics."<sup>3</sup>

Iceland is of no less interest to the United States. Many Icelanders have settled in the United States during the past century. Our troops were stationed in Iceland during World War II and even a half a year before the United States entered the war. In May 1951 American troops were again stationed in Iceland.

### *International Relations*

An Icelandic scholar has said of Iceland: "No other nation possesses so full and detailed records of its beginnings."<sup>4</sup> According to one tradition the discoverer of Iceland was Nadd-Odd, a Norwegian outlaw who had settled in the Faroes about 850.<sup>5</sup> In 860 when he was sailing to Norway, storms carried him to Iceland where he found no people. From 870 to 930 between 15,000 and 20,000 settlers from Norway came to Iceland. Economic conditions perhaps were to some extent a cause. Many came who were unwilling to accept the unification of Norway under the first king of all Norway, Harald the Fairhaired (872-930).<sup>6</sup> Two chief sources afford a complete and reliable account of the settlement: the

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<sup>1</sup> For an interesting novel of the fourteenth century period as to the relations between the three countries see SIGRID UNSET, *THE MASTER OF HESTVIKEN* (1934); and of the seventeenth century, VICTOR HUGO, *HANS OF ICELAND* (1891).

<sup>2</sup> *A STUDY OF HISTORY* (1947) 107.

<sup>3</sup> *A STUDY OF HISTORY* (1947) 146.

<sup>4</sup> JON STEFANSSON, *DENMARK AND SWEDEN WITH ICELAND AND FINLAND* (1917) 154.

<sup>5</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 8-10. Irish monks are said to have reached Iceland in 790. WILLIAM LANGER, *AN ENCYCLOPEDIA OF WORLD LAW* (1948) 170. See, however, Kristjan Eldjorn, *ROMANS IN ICELAND*, (1951) 39 AM. SCAND. REV. 123.

<sup>6</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 10-29. Harald's actions "were the chief causes of the colonization of Iceland." BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 9.

*Islandingabok*, (The Book of the Icelanders) written by Ari Thorgilsson about 1130<sup>7</sup> and the *Landnamabok* (The Book of Land-Taking).<sup>8</sup> Ingolv Arnarson, a chieftain from western Norway, led the first settlement which was made on the future site of Reykjavik, capital of Iceland. Most settlers came from the Norwegian counties of Hordaland and Rogaland. Some settlers came from the Shetland Islands, Orkneys, Hebrides, Scotland, Ireland, and England, but the Celtic strain was perhaps small<sup>9</sup> and Iceland became thoroughly Norwegian in institutions and language. In 986 Icelanders led by Eirik the Red discovered and occupied Greenland.<sup>10</sup> In 1000 Eirik's son, Leif, discovered America.<sup>11</sup>

There was no king nor even jarl in Iceland as there was no need for co-operative preparation for war. But there were chieftains, or *godar*, who headed what in fact were small states, or *godord*.<sup>12</sup> An unusually strong feeling of family and clan was developed. But the need for a common law was soon felt. An Icelandic by the name of Ulvljot was sent to study the laws of Norway, select such parts as were suited to Iceland, and compile a code. After a period of three years he returned with a code based on the Gulathing Law, the law of southwestern Norway, from which most of the Icelanders had come.<sup>13</sup> These laws were adopted in 930 at the first meeting of the national assembly called the Althing. The Althing held annual meetings. In 964 the number of chieftains was fixed at 39. The chieftains dominated the althing, so that there was no democracy as we understand it. Often they stretched the law to suit their personal aims. Yet the central government was not strong enough to enforce the law, as the power of the family in fact was the strongest. But the althing is frequently referred to as the oldest parliamentary body in the world.<sup>14</sup>

Legally, Iceland was independent. However, in some cases the king of Norway was recognized as having a position of influence if not authority. While Ice-

<sup>7</sup> This book surveys the political and ecclesiastical history, the founding of the Althing, the early courts and the discovery of Greenland. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 138-139.

<sup>8</sup> Henry Goddard Leach, editor of the *American-Scandinavian Review*, on a visit to Iceland in 1950 discovered that half of its inhabitants kept records of their descent back to ninth century Norway and that most of the other half could trace back their descent if they took the trouble.

<sup>9</sup> A former prime minister of Iceland estimates that from twelve to sixteen per cent came from the British Isles and Ireland, but even these were in turn of Norwegian descent with some foreign intermarriage. BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 5.

<sup>10</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 93-100.

<sup>11</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 100-116.

<sup>12</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 29-33. On the history of Iceland prior to its union with Norway in 1262 see the chapter "Primitive Iceland" in JAMES BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, pp. 312-358 (1901).

<sup>13</sup> KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 57-58; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 33. Bryce concludes that it was a reduction to writing of existing Norse customs which had not been reduced to writing in Norway. *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, 312, 341 (1901).

<sup>14</sup> BEN A. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* (2d ed. 1949) 30; FRANKLIN D. SCOTT, *THE UNITED STATES AND SCANDINAVIA* (1950) 47; S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 304; WILLIAM LANGER, *AN ENCYCLOPEDIA OF WORLD HISTORY* (1948) 170.

land was not incorporated into the areas controlled by the Norwegian king until 1262, close connections were maintained prior to that date.<sup>15</sup> At a time when Norwegian literature was meager Iceland made incomparable contributions to the preservation and writing of the history of Norway in sagas and scaldic verse.<sup>16</sup> While in Norway the language became Danish, Iceland preserved the Old Norse tongue.<sup>17</sup> Icelanders found greater economic opportunities in Norway. They retained their citizenship in Norway.<sup>18</sup> The Norwegian Gulathing Law dating from about 935 took account of Iceland's relation to Norway. Icelanders were to have the same rights to recovery in tort as the highest Norwegian class, that is to say, the landholders just above the class of the common freemen, while they were in Norway on their trading journeys, while all other aliens were to have merely the rights of the common freemen.<sup>19</sup> In turn, the Icelandic law conferred a privileged position not only to Norwegians but also to Danes and Swedes. Such rights were accorded to "heirs of the Danish tongue" and "men from the three kings' realms, where our language is spoken."<sup>20</sup>

Olaf Tryggvason, King of Norway from 995 to 1000, sought to introduce Christianity into Norway and to the islands settled by the Norwegians including Iceland.<sup>21</sup> Njall's Saga tells the story of how the Althing in 1000 made Christianity the official religion, yet permitted freedom of private worship, exposure of new born infants and the eating of horse-flesh. The whole North including Iceland was at first within the archbishopric of Hamburg established in 831 and later in 864

<sup>15</sup> In "all essential features Norwegian life and customs were more carefully reproduced and successfully perpetuated in Iceland than in any other Norse colony." KNUT GJERSET, *HISTORY OF ICELAND* (1925) 80.

<sup>16</sup> Snorri Sturlason (1178-1241) wrote the "Heimskringla," the first history of the Norwegian kings from 872 to 1177. It is the greatest of the sagas. English translations published in 1930 and 1932 are available. The Poetic Edda was also written in Iceland between 1150 and 1250. Konrad Maurer states: "The father of the old Scandinavian history writing was Ari Frodi, who died in 1148. Then came all also born in Iceland Odd Snorrason and Gunnlaug Leifsson, the prior Styrmer Karason and the abbot Karl Jonsson, and lastly Eirik Oddson, Snorri Sturlason and Sturla Thordsson. In the twelfth and thirteenth centuries these men were active not only as to the history of Iceland but also as to that of the Norwegian kings." BAEDER'S SCHWEDEN UND NORWEGEN (4th ed. 1888) LIX. The reasons for the lack of writing in Norway were that the Norwegian church adhered closely to the strictly clerical duties and the use of Latin and that civil war raged in Norway. With "comparatively few exceptions and sagas as we now possess them are of Icelandic origin." KNUT GJERSET, *HISTORY OF ICELAND* (1925) 131.

<sup>17</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 256. The present Icelandic is similar to that of 1350, whereas the other Scandinavian, English and Germanic languages subsequently underwent great changes. For the best and most recent book on modern Icelandic see STEFAN EINARSSON, *ICELANDIC*, (1949) published by the Johns Hopkins Press. As to the Old Norse language see E. V. GORDON, *AN INTRODUCTION TO OLD NORSE* (1927). For the only cultural history of the language see HALDOR HERMANSSON, *MODERN ICELANDIC, AN ESSAY* (1919).

<sup>18</sup> KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 58, 84.

<sup>19</sup> LAURENCE M. LARSON, *THE EARLIEST NORWEGIAN LAWS* (1935) 144-145. See also GJERSET, *A HISTORY OF THE NORWEGIAN PEOPLE* (1927), Vol. I, pp. 434-435; BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, 312, 344 (1901).

<sup>20</sup> HENNING FRJIS, *SCANDINAVIA BETWEEN EAST AND WEST* (1950) 309.

<sup>21</sup> KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 96; THOMAS CARLYLE, *THE EARLY KINGS OF NORWAY* (1875) 66-67; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 48-70. According to Toynbee the conversion of Iceland brought on "the end of the Icelandic culture." *A STUDY OF HISTORY* (1947) 159.

combined with Bremen.<sup>22</sup> In 1104 an archbishopric for the Scandinavian countries was established at Lund in Skaane, then a part of Denmark.<sup>23</sup> Iceland received its first bishop in 1056, Isleif at Skalholt.<sup>24</sup> In 1152 the archbishopric of Trondheim was established, thus separating Norway from the archbishopric of Lund which had previously comprised all the Scandinavian states. The new archbishop had ten bishoprics under him, including two in Iceland, though Iceland was not legally a part of Norway.<sup>25</sup> The Icelandic church in contrast to the Norwegian, was so independent as to excite the displeasure of both the Pope and the King of Norway. Celibacy of the clergy was not at once introduced and bishops were chosen by the Althing. In the thirteenth century the Icelandic chieftains refused to submit to the claims of the archbishop of Norway that the Icelandic bishop have jurisdiction over their clergy, thus giving King Haakon the Old some reasons to intervene until finally in 1262 Iceland became legally a part of Norway.<sup>26</sup>

King Harald the Fairhaired (872-930) appears to have regarded Iceland as a quasi-Norwegian dependency, but failed to bring it under his dominion. The Icelanders invited Harald to arbitrate the size of landholdings in Iceland, and also agreed to pay the *landaurer* tax for unrestricted intercourse with Norway.<sup>27</sup> King Harald Bluetooth (950-985) of Denmark was interested in Iceland, but took no warlike steps to acquire it although he acquired an overlordship in Norway. From 930 to 995 the Norwegian king made no attempt to exert direct influence over Iceland.<sup>28</sup> King Olaf Trygvasson (995-1000) instigated Christianity in Iceland and perhaps wished to accompany it with political control as he had done in the Orkneys and the Faroe Islands.<sup>29</sup> King Olaf the Saint (1016-1028) secured a final purging of all heathen customs in Iceland and provided bishops. In 1022 he made an agreement with the Icelandic chiefs known as the "Institutions and Law Which King Olaf gave the Icelanders" providing for reciprocal interests in the two countries, and in 1024 he invited the Althing to recognize him as ruler but without success.<sup>30</sup> An Icelandic chieftain, Loptr Saemundarsen, brought to Iceland from Norway as his bride a daughter of King Magnus II (1066-1069).<sup>31</sup> Icelandic contacts with foreign nations were

<sup>22</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 102-103.

<sup>23</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 123.

<sup>24</sup> Tithing was introduced in 1096. JON STEFANSSON, DENMARK AND SWEDEN WITH ICELAND AND FINLAND (1917) 159. In 1123 a church code was prepared by Bishops Thorlak and Ketill. KNUT GJERSET, HISTORY OF ICELAND (1925) 68.

<sup>25</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 158-160; KAREN LARSEN, A HISTORY OF NORWAY (1948) 134, 169.

<sup>26</sup> S. M. TOYNE, THE SCANDINAVIANS IN HISTORY (1948) 305.

<sup>27</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 168.

<sup>28</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 53. The period from 930 to 1030, known as the Saga Age, was one of unrest and bloody feuds, while that from 1030 to 1118 was one of tranquillity. KNUT GJERSET, HISTORY OF ICELAND (1925) 132.

<sup>29</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 62, 64, 168.

<sup>30</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 168-169.

<sup>31</sup> P. SCHWEITZER, ISLAND LAND UND LEUTE (1890) 28.

made through its scalds the best of whom went to Norway. Civil wars in Norway from 1130 to 1217 meant that Norway could pay but little attention to colonial policy. In 1152 Iceland came under the Norwegian archbishopric. In 1163 an Icelandic chieftain and bishops attended the coronation of the Norwegian king. In 1178 the archbishop in consecrating an Icelandic bishop so maneuvered as to impress on him that Iceland should be regarded as a mere dependency of Norway.<sup>32</sup> Snorri Sturlason upon retiring as law speaker for Iceland spent the years from 1218 to 1220 at the Norwegian court. Duke Skule planned a military expedition to subjugate Iceland, following a dispute, but Snorri induced him to give it up.<sup>33</sup> Snorri made a secret agreement with the king and duke to bring Iceland under Norway in a peaceful manner, but he did not attempt to carry it out. He was the first Icelander to be made a Norwegian baron since 1030. He did carry out an agreement to protect Norwegian merchants in Iceland. About 1235 an Icelandic chieftain, Sturla Sighvatsson, promised the Norwegian king to subjugate Iceland for Norway; in turn Sturla was to be made *jarl*.<sup>34</sup> About 1250 both countries abolished trial by ordeal.<sup>35</sup>

While there was close religious, cultural, racial, and economic ties between Iceland and Norway, Iceland remained politically independent with much success until the middle of the twelfth century.<sup>36</sup> At that date the balance of power between the chieftains was broken. Disorders arose from their rivalry. The want of a central executive was more and more felt. Shipping fell off, and there was an undue concentration on agriculture. Repeatedly, Norwegian help was asked for and given. Jarl Skule, who was very powerful in Norway prior to 1240, was the first to take steps leading to a political union. But prior to consummation of the union, there was a long period of civil war in Iceland from 1200 to 1262, called the Sturlunga Age, because of the prominence of a family bearing that name.<sup>37</sup> In 1241 King Haakon induced the leader of one faction to kill Snorri Sturlason who had supported Jarl Skule, the great rival of Haakon, Skule himself being killed about the same time. In 1258 Haakon made this leader Gissur Thorvaldsson the first jarl of Iceland even though Iceland had not yet recognized his overlordship. When Gissur died in 1268 no jarl was chosen as the title had proved unpopular. Instead the king appointed two royal magistrates with the title of *Valdsmadr*, one for the western and the other for the eastern districts.<sup>38</sup>

In 1262 there was a voluntary agreement under which Iceland recognized the Norwegian king and agreed to pay taxes and fines in return for a guarantee

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<sup>32</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 160-162. During this period relations between Iceland and Norway were strained because of a failure to settle a controversy "arising from murders and robberies."

<sup>33</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 170-172.

<sup>34</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 177.

<sup>35</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 194.

<sup>36</sup> KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 169.

<sup>37</sup> HJALMAR H. BOYESEN, *A HISTORY OF NORWAY* (1900) 433-444; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 173-202.

<sup>38</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 212-213.

of trade and the maintenance of Icelandic law. Thus Iceland, which had been an independent republic for four centuries, became a part of the domains of the King of Norway. The Norwegian king had been strongly supported by the Norwegian archbishop who desired to strengthen his hold over the nationalistic church of Iceland.<sup>39</sup> The absence of a central government and the alienability of the *godord* eventually had produced disorder. Iceland could not go on indefinitely with no central executive, no system of taxation, no machinery for enforcement of judgments, no police, and no machinery for carrying on international relations. Haakon the Old thus found it easy to win over Iceland through bribes and threats, drawing Icelanders to his court, sending commissions all over Iceland, and influencing the few chieftains who controlled the Althing.

In 1319 the male line of Norwegian kings ended and Magnus, a son of the last king's daughter, married to a Swedish duke, became king of both Norway and Sweden. After reiterating their former demands for fulfillment of the union agreement of 1262, the Icelanders swore allegiance to the new king in 1320 and the king seems to have complied with their demands.<sup>40</sup> The union between Norway and Sweden lasted until 1371. When in 1355 King Magnus was deposed and replaced by his son Haakan as king of Norway, Magnus' wife, Queen Blanche, retained Iceland as her Norwegian dowry.<sup>41</sup>

In 1380 Norway came into a union with Denmark lasting until 1814, and Sweden which possessed Finland came into this union in 1397, remaining in it with some intermissions until 1523. Queen Margaret (1388-1405) was unpopular in Iceland because she sought increased taxes.<sup>42</sup> The Norwegian influence was not immediately lost. But gradually Danes were selected as higher officials and bishops, and Danish commercial and administrative policy came to control.<sup>43</sup> Although Sweden was a member of the Kalmar Union, she exercised no power over Iceland.

In 1302 the Norwegian king made a regulation that only Norwegian merchants might trade in Iceland.<sup>44</sup> English and German trade with Iceland had flourished up to this time. By 1340 much codfish was exported to Norway. From 1350 to 1400 fewer ships came to Iceland. Laws of 1382, 1383 and 1389 laid down tariffs on imports from Iceland. The large trade carried on by the merchants of Bergen, Norway with Iceland was largely destroyed by the ravages

<sup>39</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 11; KNUT GJERSET, *HISTORY OF THE NORWEGIAN PEOPLE*, Vol. I, pp. 434-438 (1927). In 1238 two Norwegians were consecrated bishops for Iceland. About 1240 the archbishop made a regulation that Icelandic bishops should be chosen by the archbishop and the cathedral chapter at Trondheim. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 183. It was also asserted that the idea of a republic was less in conformity with true religion than a monarchy.

<sup>40</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 236.

<sup>41</sup> KNUT GJERSET, *HISTORY OF THE NORWEGIAN PEOPLE*, Vol. II, p. 15 (1927).

<sup>42</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 246.

<sup>43</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 257. The Danish influence became much greater after the Protestant Reformation and especially after the absolute monarchy set up in 1660.

<sup>44</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 229, 243.

of the Victual brothers who burned Bergen in 1393 and 1428.<sup>45</sup> After a lapse of a century English trade with Iceland was resumed in the fifteenth century.<sup>46</sup> King Eirik of the United Scandinavian realms protested in vain in 1413, 1415, and 1431, and for a time the English exercised almost complete control over Icelandic trade. In 1433 the English king finally issued an order prohibiting English trade with Iceland. A war from 1469 to 1474 between Denmark-Norway and England did not seriously interfere with trade between Iceland and England. A treaty with England in 1490 gave the English the privilege of free trade in Iceland for seven years. German trade with Iceland commenced in 1430, the first German merchants coming from Lubeck and Danzig, then later from Hamburg and Bremen.<sup>47</sup> King Hans (1483-1513) had signed a convention with the Norwegian and Swedish councils that he would forbid Hanseatic trade with Iceland, and sought to limit such trade by admitting English and Dutch trade. In 1513 an ordinance forbade Hanseatic trade, but it was ineffectual, and during the reign of Frederick I (1524-1533) German and English merchants actually took part in the deliberations of the Althing.

Icelandic contacts of importance with outsiders occurred in the sixteenth century. There were disputes with English fishermen, and the Icelanders appealed to Copenhagen for help.<sup>48</sup> The Danish government forbade the English to fish in Icelandic waters. The English fisherman appealed to their king, Henry VIII. But he was preoccupied with the Reformation Parliament (1529-1536). The Icelanders were resisting the Reformation. Henry VIII offered to buy Iceland, thus acquiring fishing territory and relieving Denmark of a rebellious country. But the purchase never came off, and was not again considered.

From the middle of the sixteenth century Icelandic trade became increasingly Danish.<sup>49</sup> In 1547 King Christian III granted Iceland to the Mayor of Copenhagen for a certain yearly tax. About 1560 Danish merchants began to trade with Iceland. In 1572 all Icelandic harbors were closed to Hamburg and German trade was soon weakened, and finally ceased in the reign of Christian IV (1588-1648). In 1602 the king granted the Icelandic trade as a monopoly to three Danish cities: Copenhagen, Malmo, and Helsingor.<sup>50</sup> Negotiations by Hamburg for the lease of the island in 1645 and 1675 were unsuccessful. In 1662 a new Danish company was organized which received a twenty-year monopoly of Icelandic trade. Up to 1786 trade was conducted either by merchant companies or by the Danish

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<sup>45</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 257-258.

<sup>46</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 258-266.

<sup>47</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 272-277.

<sup>48</sup> S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 306.

<sup>49</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 276-277.

<sup>50</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 276, 330-331. "In justice to the Danish government it must be said, then, that this way of dealing with Icelandic commerce did not differ from the general policy pursued by other nations at this time." *Ibid.*, 330.



government.<sup>51</sup> Finally in 1786 it was made free to all citizens of Denmark and Norway, although some restrictions on trade continued until 1854.<sup>52</sup>

From 1662 to 1814 the relation of Iceland to Denmark was very close, as an absolute monarchy then prevailed.<sup>53</sup> Laws were made by the king, administration was placed in Danish hands, and the Supreme Court of Denmark became the highest court for Iceland. The Danes kept close control over trade and government. In 1809 Americans commenced a small trade there, and gained a special license in 1815.<sup>54</sup>

About the year 1800 Napoleon imposed his Continental system on Denmark. England retaliated with a naval blockade, thus shutting off grain supplies from Iceland.<sup>55</sup> As the Danish fleet had been captured, no help could be expected from Denmark. England out of humanitarian motives adopted in 1810 an Order of Council declaring Iceland a noncombatant and food supplies were thus permitted to enter.

When the union between Norway and Denmark was severed in 1814 it would seem that Iceland should have continued in union with Norway rather than Denmark since the original union agreement was with Norway and, furthermore, since the Icelanders were overwhelmingly of Norwegian descent.<sup>56</sup> There is no evidence that the wishes of the Icelanders themselves were consulted. The preliminaries to the Treaty of Kiel referred to Iceland as having "never belonged to Norway." One writer has concluded that the separation from Norway arose out of the haste in drafting the Treaty of Kiel.<sup>57</sup>

Following the separation of Norway from Denmark and its union with Sweden, Denmark demanded fulfillment of a clause in the Treaty of Kiel for reimbursement for a fair share of the Danish-Norwegian debt. The Quintuple Alliance backed the Danish claim in 1818. Karl Johan, the king of Sweden and Norway, advanced a claim for the return of Iceland, which under the Treaty of Kiel had been retained by Denmark.<sup>58</sup> But the Norwegians were too timid to press the matter.

The meaning of the treaty of 1262 now became an issue. The Icelanders contended that it simply united Iceland and Norway under one king. The Danes asserted that a real union had occurred and that Iceland had been incorporated

<sup>51</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 335-345.

<sup>52</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 363-364.

<sup>53</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 332-334.

<sup>54</sup> AUSTIN H. CLARK, *ICELAND AND GREENLAND* (1943) 29; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 359-360.

<sup>55</sup> S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 307-308; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 350-361.

<sup>56</sup> JAMES BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. 1, pp. 312, 357.

<sup>57</sup> KNUT GJERSET, *HISTORY OF THE NORWEGIAN PEOPLE*, Vol. II, p. 415 (1927).

<sup>58</sup> KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 409; S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 281.

into Norway and therefore now had the same status as to Denmark.<sup>59</sup> When the Danish king set up consultative chambers in Denmark the Icelanders claimed equal rights.<sup>60</sup> The Danish king complied by summoning a commission of Icelandic officials to make proposals and later they re-established the Althing as a consultative assembly, chosen largely by the Icelanders which first met in 1845.

In 1849 Denmark adopted a new Constitution and wished to apply it to Iceland. The Icelanders objected and cited the old treaty of union with Norway of 1262. This very nearly resulted in civil war which was averted through the efforts of Jon Sigurdsson (1811-1879), probably the greatest statesman Iceland has produced.<sup>61</sup> But in 1874 on the thousandth anniversary of the Norwegian settlement of Iceland, a new constitution was granted to Iceland, based on a Danish law of 1871.<sup>62</sup> The Althing was divided into two houses and given full legislative powers as to local matters. The king of Denmark was to appoint a resident governor who should lay the bills passed by the Althing before the king for his sanction. Iceland did not have to contribute to support the defense forces or the civil list, and had the power of local taxation, but no voice in foreign affairs. The Althing had also lost its power as the final appellate court. The Danish Minister of Justice was the key Danish official at Copenhagen, and the king vetoed many bills upon his advice as well as that of the governor. In 1904 an Icelandic ministry responsible to the Althing was established in Iceland itself. In 1913 nationalism was encouraged when Iceland secured a distinct flag of its own.

During the American Civil War period and shortly thereafter Secretary of State Seward was anxious that the United States buy Iceland and Greenland from Denmark.<sup>63</sup>

From 1870 to 1900 some 15,000 Icelanders emigrated to America, chiefly to Canada and the United States.<sup>64</sup> The main settlements were in Alberta, Manitoba, Ontario, Saskatchewan, Minnesota, North Dakota, South Dakota, Utah and Wisconsin. There are now about 40,000 such persons.

Under the Act of Union of November 30, 1918, Iceland was recognized

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<sup>59</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 12.

<sup>60</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 372-375; BALDWIN EINARSSON, *OM DE DANSKE PROVINCIAL STAENDER MED SPECIELT HENSYN PAA ISLAND* (1832).

<sup>61</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 375-386; S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 308.

<sup>62</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 406-412.

<sup>63</sup> Hans Weigert, *ICELAND, GREENLAND AND THE UNITED STATES* (Oct. 1944) *FOREIGN AFFAIRS*, 112.

<sup>64</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 458-471; BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 7. See also J. G. HOLME, *ICELANDERS IN THE UNITED STATES* (1921) New York.

as a sovereign state united with Denmark in the person of its ruler.<sup>65</sup> Among joint affairs were coinage and the supreme court, but these were almost immediately taken over by Iceland as the treaty permitted. But there remained in the joint category the rights of citizens of the one country in the other, Icelandic foreign affairs were handled by Denmark, and Denmark undertook to protect fishing in Icelandic waters. At the end of 1940 the states could demand a revision of the treaty. If no revision were made within three years of demand, each state could decide that the treaty had lapsed. The Act of Union offers an instance of "self-neutralization" which could have political but not legal consequences.<sup>66</sup>

Since 1918 Iceland has been a sovereign state. While Denmark was invited to accede to the Covenant of the League of Nations and did accede, Iceland was not so invited and did not accede.<sup>67</sup> Though Denmark joined the League sanctions against Italy when Italy invaded Ethiopia, Iceland concluded a trade treaty with Italy. Iceland became a party to the Paris Pact for the Renunciation of War of 1928.<sup>68</sup> It belongs to the Postal Union and a number of other international organizations.<sup>69</sup> On November 19, 1946 it was admitted to the United Nations.<sup>70</sup> As such it is a party to the Statute of the International Justice, but up to 1950 it had not become subject to its obligatory jurisdiction.<sup>71</sup>

The United States recognized Iceland through the conclusion of bilateral treaties with it.<sup>72</sup> In a letter of December 1933 the State Department stated that up to that time it had "not been found feasible" to send a resident representative to Iceland from the United States.<sup>73</sup> From 1946 to 1948 W. Trimble was in charge of the American legation in Reykjavik. In 1948 the United States sent a new envoy, Richard P. Butrick.<sup>74</sup>

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<sup>65</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 14-16; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 447-451. The treaty is set out in HUDSON, *CASES ON INTERNATIONAL LAW* (2d ed. 1936) 46-47. The act of union was adopted by the Danish Rigsdag and the Althing, and then approved by a popular vote in Iceland, 12,040 favoring and 897 opposing. See also 1 HYDE, *INTERNATIONAL LAW* (2d ed. 1945) Sec. 31, pp. 125-126; 1 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1940) 59, 213; 4 HACKWORTH 611. Some writers regarded the union as a real rather than a personal union. 1 OPPENHEIM, *INTERNATIONAL LAW* (5th ed. by Lauterpacht, 1937) 158, n. 2.

<sup>66</sup> 1 HYDE, *INTERNATIONAL LAW* (2d ed. 1945) Sec. 29, p. 110, n. 2; 1 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1940) 66, 74.

<sup>67</sup> MANLEY O. HUDSON, *CASES ON INTERNATIONAL LAW* (2d ed. 1936) 23.

<sup>68</sup> MANLEY O. HUDSON, *CASES ON INTERNATIONAL LAW* (2d ed. 1936) 24.

<sup>69</sup> See the lists of memberships of specialized agencies in LOUIS B. SOHN, *CASES AND MATERIALS ON WORLD LAW* (1950) 175-178.

<sup>70</sup> LOUIS B. SOHN, *CASES AND OTHER MATERIALS ON WORLD LAW* (1950) 174. It was not an original member.

<sup>71</sup> MANLEY O. HUDSON, "The Twenty-Ninth Year of the World Court," (Jan. 1951) 45 *AM. J. INT. L.* 1, 32. Denmark, Norway, and Sweden are all subject to such jurisdiction.

<sup>72</sup> 1 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1940) 167, 213; 1 HYDE, *INTERNATIONAL LAW* (2d ed. 1945) 150.

<sup>73</sup> 1 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1940) 213.

<sup>74</sup> "The Quarter's History—Iceland," (Sept. 1948) 36 *AM. SCAND. REV.* 243, 244.

By exchange of notes signed in 1922 the United States and Iceland provided for relief from double income tax on shipping profits.<sup>75</sup> They concluded an arbitration treaty on May 15, 1930. On January 16, 1932 there was an exchange of notes as to reciprocal recognition of load-line certificates.

Following the German occupation of Denmark on April 9, 1940, the Althing the next day appointed a regent, though it simply suspended instead of terminating the union with Denmark.<sup>76</sup> On May 10, 1940 British troops landed in Iceland. On May 17, 1941 the Althing passed joint resolutions indicating that Iceland would not renew the union with Denmark. On July 7, 1941 an agreement between the United States and Iceland provided for withdrawal of American troops at the close of the war. An executive agreement of July 1, 1941 provided that the United States would undertake to defend Iceland.<sup>77</sup> At a referendum on May 24, 1944 only 370 votes opposed severance from Denmark and 1042 a republic. On June 17, 1944 the new Constitution went into effect and Iceland became an independent republic.

Before World War II Icelandic imports were chiefly from Denmark and Great Britain and her exports to Spain, Norway, Sweden, and Portugal.<sup>78</sup> But in 1946 and 1947 Soviet Russia was second only to Great Britain in purchases from Iceland. The purchases of Russia dropped off sharply in 1948 when American assistance under ERP was given.<sup>79</sup> From 1944 to 1946 two members of the Icelandic cabinet were communists.<sup>80</sup> In the June 1946 election three of the seventeen members of the Upper Chamber and seven of the thirty-five members of the Lower Chamber were communists. In the election of October 1949 the total number of communists in the Althing dropped from ten to nine.<sup>81</sup> In November 1950 the election of delegates to the biennial congress of the Icelandic Labor Federation resulted in a crushing defeat to the communists, and they also lost control of the Reykjavik Labor Council.<sup>82</sup>

In recent years some thirty nations have made claims to jurisdiction over submarine areas lying beyond the traditional limits of their territorial waters. In an action in 1948 directed solely to fisheries, Iceland has asserted the right to

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<sup>75</sup> 1 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1940) 213.

<sup>76</sup> 1 HYDE, *INTERNATIONAL LAW* (2d ed. 1945) 125. The legality of the separation is asserted by Sveinbjorn Johnson, "Iceland and the Americas," (1940) 26 A. B. A. J. 506.

<sup>77</sup> 2 HYDE, *INTERNATIONAL LAW* (2d ed. 1945) 1415; 5 HACKWORTH, *DIGEST OF INTERNATIONAL LAW* (1943) 460-462. On the evacuation of American troops in 1946 see letter of Henry A. Wallace, *NEW YORK TIMES*, May 15, 1951, p. 30, Col. 6.

<sup>78</sup> Hans W. Weigert, "Iceland, Greenland and the United States," (Oct. 1944) *FOREIGN AFFAIRS*, 112, 113.

<sup>79</sup> FRANKLIN D. SCOTT, *THE UNITED STATES AND SCANDINAVIA* (1950) 196, 200; "The Quarter's History—Iceland," (November 1949) 37 *AM. SCAND. REV.* 51.

<sup>80</sup> FRANKLIN D. SCOTT, *THE UNITED STATES AND SCANDINAVIA* (1950) 289.

<sup>81</sup> FRANKLIN D. SCOTT, *THE UNITED STATES AND SCANDINAVIA* (1950) 323.

<sup>82</sup> "The Quarter's History—Iceland," (March 1951) 39 *AM. SCAND. REV.* 55.

take conservation measures within the limits of the continental shelf.<sup>83</sup> In the spring of 1950 it declared a four-mile protected area off the north coast of Iceland.<sup>84</sup>

In June 1948 the International Civil Aviation Organization Conference on Air Navigation Services in Iceland was held at Geneva, Switzerland. The task of the conference was to reach agreement on the technical details of the air navigation services in Iceland for North Atlantic air navigation, and to agree upon the proportion which contributing states should pay to Iceland, and the terms under which Iceland would undertake to supply these services.<sup>85</sup> In September 1948 Iceland made an agreement with the Council of this body.

In 1949 Iceland signed the North Atlantic Treaty. The Foreign Minister for Iceland stated, on such signing, that although "we are quite unable to defend ourselves from any foreign armed attack . . . we also want to make it crystal clear that we belong to this free community of free nations which now is being fervently founded."<sup>86</sup> He added that Icelanders "would all prefer to lose our lives rather than lose our freedom."

James Reston of the New York Times has pointed out that "even to protect the ocean approaches to the United States, it is necessary to have bases in such places as Iceland, Greenland and the Azores, which do not belong to us."<sup>87</sup> In turn, Iceland needs our aid. Asking with what country Iceland should ally herself, an English historian has concluded: "Her history of a thousand years, her respect for individual freedom of action, inherited from her Norwegian parentage, all point the way to the democracy of the West."<sup>88</sup> It has been contended that Iceland would come under the protection of the Monroe Doctrine.<sup>89</sup>

On May 7, 1951 a first contingent of two hundred American soldiers landed in Iceland at its invitation.<sup>90</sup> Their activities will center on the two main airports. The Icelandic government first consulted and obtained the approval of 43 out of the 52 members of the Althing, the other nine being communists.<sup>91</sup> Iceland retains

<sup>83</sup> Law No. 44 of April 5, 1948. See Richard Young, "The Legal Status of Submarine Areas Beneath the High Seas," (April 1951) 45 AM. J. INT. L. 225.

<sup>84</sup> "The Quarter's History—Iceland," (Sept. 1950) 38 AM. SCAND. REV. 267, 269. Iceland has urged that the International Law Commission give priority to the "regime of territorial waters," (1950) 44 AM. J. INT. L. 527, 533.

<sup>85</sup> Paul A. Smith, "ICAO Conference on Air Navigation Services in Iceland," (Feb. 6, 1949) DEPT. STATE BULL. 164.

<sup>86</sup> NEW YORK TIMES, May 9, 1951, p. 32, col. 3.

<sup>87</sup> NEW YORK TIMES, April 22, 1951. See also BJORN THORDARSON, ICELAND PAST AND PRESENT (1945) 39-44.

<sup>88</sup> S. M. TOYNE, THE SCANDINAVIANS IN HISTORY (1948) 310.

<sup>89</sup> Gudmundur Grimson, "Iceland and the Americas," (1940) 26 A. B. A. J. 505, 506.

<sup>90</sup> NEW YORK TIMES, May 8, 1951, p. 13.

<sup>91</sup> At the October 1949 election to the Althing the Conservatives won 19 seats, the Progressives 17, the Communists 9, and the Social Democrats 7. The five members of the cabinet are all Conservatives. FRANKLIN D. SCOTT, THE UNITED STATES AND SCANDINAVIA (1950) 322-323. For the history of the political parties since 1903 see KNUT GJERSET, HISTORY OF ICELAND (1925) 420, 429-430, 434-435, 446.

control of the number of troops to be there. A treaty was signed on May 5, 1951 authorizing such troops in furtherance of the North Atlantic Treaty to which Iceland is a party.

### *Icelandic Law Before 1262*

Those Icelanders learned in the ancient law of custom and preeminent in that respect were given the title of "lawmen."<sup>92</sup> They were instructors, private counsellors, and consulted at the "things," thus in effect serving as judges in litigated cases. They retained a semi-official character for three centuries in both Norway and Iceland after the emigration and settlement of Iceland. An official custodian of the law about 930 was provided for when the first attempt was made to establish a legal system. The "Law-Saga Man", now made the custodian, was required to recite the existing rules of law before the annual meeting of the Althing.<sup>93</sup> In the course of every three years the entire body of the law would be recited. The "Law-Saga Man" or law speaker to some extent superseded the lawmen, but on certain occasions he was required to consult five or more of the lawmen. The principal reason for establishing the office was to eliminate confusion resulting from variances between the Icelandic system and that brought from Norway. It seems possible that the system of public recital of the law was copied from an earlier similar system in Sweden.<sup>94</sup> The *logretta* or law-making assembly had the function of approving or disapproving the public recital of the law by the law speaker. Where there were disputes as to interpreting and applying the legal rules this body determined and announced its will. The Icelandic law speaker was so emphatically viewed as the custodian of the law that the famous Njall Saga attributes to one of them the statement that he did not believe that any other person of his generation knew the rule of law for a certain case. Even after law texts and codes had been written, the lawmen exercised a supplementary authority.

The law speaker was the sole national official of the republic. He recited the law. He presided over the *logretta*. He answered questions as to the law. He was paid annually one half of the fines imposed at the Althing and a certain amount of woolen cloth. He was one of the chief lawyers of his day. But in reality he was neither a judge nor a magistrate, nor a legislator. He gave no judgments, nor could he enforce judgments nor punish offenders. He did not open the Althing nor maintain order at its sessions. In effect he was the "living voice of the law."<sup>95</sup>

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<sup>92</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 535. On Icelandic law prior to 1262 there are full accounts by KONRAD MAURER, ISLAND VON SEINER ENTDECKUNG BIS ZUM UBERGANG DES FREISTAATS (1874). His later reviewed views may be found in MAURER, VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE (1909-1910), Vols. IV and V.

<sup>93</sup> He was elected by unanimous vote of the *logretta*. KNUT GJERSET, HISTORY OF ICELAND (1925) 42.

<sup>94</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 537, n. 1.

<sup>95</sup> JAMES BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, Vol. I, 312, 327 (1901). For full discussion see KONRAD MAURER, VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE, Vol. IV, 263-280; Vol. V, 455-460 (1909-1910).

The Althing differed from legislative bodies in other countries. It was not a primary assembly. That is to say it was not attended by the people as a whole like a New England town meeting. It was not a representative assembly in the sense that it was selected by popular vote to represent the people. Nor was it a king's council, such as existed in Denmark, Norway, and Sweden.

For legislative purposes the Althing acted through a group of 144 men called the *logretta*.<sup>96</sup> Of these only one-third, the 39 *godar* and their nine nominees, could vote. These nine nominees were elected by the *godar* of the south, west, and east quarters in order to give them the same number in the *logretta* as the north quarter had. Each of these 48 appointed two assessors to advise him. When Christianity was introduced in 1000 the two bishops were added to the *logretta*. The law speaker presided over this body.

When the legal system was organized in Iceland in 930 the Althing received very broad authority. It was both the general legislative and the highest judicial body.<sup>97</sup> As has been seen this body was dominated by an inner circle, corresponding to the Norwegian *lagretten* or "law-right", which was made up of the Icelandic chieftains (*Goder*), the law-saga man, and the two bishops (after Christianity was introduced.) In 965 four courts were set up to try cases in the four divisions of the country.<sup>98</sup> A fifth tribunal was set up in 1004 for special cases. The Althing was the final court of appeal. Each of the four divisions had three local courts (*thing-lag*). These local courts were presided over by local chiefs. But in form the people adopted the determinations of the local court. Each peasant chose to which chief's circle he would belong, as the "thing-lag" was more a union than it was a district.

Much of the early law of Iceland was customary law, preserved by the law speaker and the lawmen, and amended by the Althing.<sup>99</sup> A very technical judicial procedure grew up in part because form and substance were not as yet sharply distinguished and because both laymen and officials were conservative.

Schools of law seem to have flourished in the eleventh century.<sup>100</sup> They were conducted by sages such as Brennu Njall<sup>101</sup> and Skapti Thorodsson.<sup>102</sup> Discussions of the law are to be found in the sagas and ancient law books compiled about 1150

<sup>96</sup> JON STEFANSSON, DENMARK AND SWEDEN WITH ICELAND AND FINLAND (1917) 154-156.

<sup>97</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 541. See also GJERSET, HISTORY OF ICELAND (1925) 23-48; BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, Vol. I, 312, 323-333; KONRAD MAURER, VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE, Vol. 4, pp. 325-402 (1909).

<sup>98</sup> On the organization, jurisdiction and procedure of the Icelandic courts prior to 1262 see KONRAD, MAURER, VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE, Vol. V, pp. 289-820 (1910).

<sup>99</sup> JAMES BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, Vol. I, 312, 337 (1901).

<sup>100</sup> JAMES BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, Vol. I, 312, 341 (1925).

<sup>101</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 52, 59-60, 145-148.

<sup>102</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 64.

out of materials going back to the eleventh and even the tenth centuries.<sup>108</sup> The Icelandic scholars "made the classic digests of Scandinavian mythology, genealogy and law."<sup>104</sup>

Iceland was the first of the Scandinavian countries to establish a written law text or code. In 1117 the Althing appointed a commission to prepare a written collection of the prevailing rules and to prepare desirable changes in them.<sup>105</sup> The members of the committee were experts on the law of the time. Their text was adopted and ratified in 1118 and was called the "Haflida-Skra"<sup>106</sup> after the chairman of the commission, the chieftain Haflide Maarson. The text is in fact declaratory of the customary law rather than an official statutory code. The opinions of the lawmen as auxiliary authorities were recognized where consistent with its provisions. The text contains a number of contradictions between the various codes. It dealt with all the temporal affairs of the country, but its scope is not precisely known, as the original does not exist. Between 1122 and 1133 an ecclesiastical code known as the "Kristenret" was prepared by Bishops Thorlak and Ketil. Numerous texts based on these two collections appeared during the next century and a half. Chief among them still preserved are the "King-book" and the "Stadarholsbok" written between 1260 and 1270. These law texts are now commonly designated as the "Icelandic Gragas."<sup>107</sup> A few decades later the Norwegians followed the Icelandic example and reduced their laws to writing.

Copies of the Icelandic Gragas were first published in 1829 by the Arnamagneam Foundation in Copenhagen. It consists of ordinances of the Althing, decisions and declarations of the law speeches, ecclesiastical regulations, formulas of legal procedure and legal transactions, and memoranda of legal questions.<sup>108</sup>

An Icelandic professor of law has concluded that the Gragas was a "richly developed and remarkable law certainly on a Germanic basis but still different in many respects."<sup>109</sup> It was the "result of a long development, though it is seldom

<sup>108</sup> KONRAD MAURER, *ISLAND VON SEINER ENTDECKUNG BIS ZUM UNTERGANGE DES FREISTAATS* (1874) 464-466.

<sup>104</sup> ARNOLD J. TOYNBEE, *A STUDY OF HISTORY* (1947) 159-160.

<sup>105</sup> Thomas Carlyle refers to this law as the Icelandic Gragas. *THE EARLY KINGS OF NORWAY* (1875) 168. It was at least a part of the Gragas. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 68. It is said that "the writing down of laws began in 1117." BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 31.

<sup>106</sup> "Skra" is the Icelandic word for scroll, thus indicating that this law was in writing.

<sup>107</sup> As to the source of the name "Gragas," Thomas Carlyle surmises as to the Norwegian Gragas of 1037 that it may have come from the gray color of the parchment or that it merely denotes antiquity, the witty expression in Norway for a man growing old having then been that he was now "becoming a gray-goose." *THE EARLY KINGS OF NORWAY* (1875) 168. He calls the Icelandic Gragas the more famous of the two. See also BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, 312, 342 (1901). Bryce ascribes the name to the binding of the book. He concludes that the name was first applied to the early Frostathing law of Norway, and was applied to the Icelandic law first in the seventeenth century. See also KONRAD MAURER, *ISLAND VON SEINER ERSTEN ENTDECKUNG BIS ZUM UNTERGANGE DES FREISTAATS* (1874) 464-466.

<sup>108</sup> JAMES BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, 312, 342 (1901).

<sup>109</sup> Olafur Larusson, "Den islandska rattens utveckling sedan ar 1262," (1950) 35 *SVENSK JURIST-TIDNING* 241, 258.



possible to follow the separate phases of such development." An American professor of law of Icelandic descent has pointed out that "no study of the customary law of Scandinavia can be regarded as even measurably complete until the oldest source of Scandinavian law, the Icelandic Gragas, has been translated into English. In that volume appears the customary law of ancient Scandinavia uncontaminated by the decretal amendments of monarchs who collectively concentrated in themselves all the powers which theretofore had belonged to and been exercised by the people."<sup>110</sup>

### *Norwegian Influence on Icelandic Law After 1262*

The year 1262 is of tremendous significance in Icelandic history because it was in that year that Iceland, formerly an independent republic, first came under a foreign king.<sup>111</sup> This change obviously had permanent effects on the subsequent legal history of Iceland.

The wording of the agreement was so significant for almost seven hundred years that it deserves recording. The *logretta*, on behalf of the people, took the oath of allegiance and made the following agreement with the king of Norway, known as the "*Gamli satt-mali*, 1262":

"This is the agreement of the people of northern and southern Iceland, that we grant King Haakon and Magnus under oath land, thanes, and eternal taxes, twenty *alnar* for every man who pays the tax of *thingfararkaup*. These taxes are to be collected by the heppstjorar, brought to the ship, and delivered to the royal officials, after which there is to be no responsibility for them. In consideration hereof the king is to let us enjoy peace and the Icelandic laws. Six ships are to sail from Norway to Iceland every summer during the next two years. From that time forth this matter shall be arranged in such a way as the king and our best men shall deem most serviceable for the country. Any inheritance which falls to Icelanders in Norway is to be given them, however long it may remain due, so soon as the rightful heirs, or their legal representatives, appear to claim it. The *landaurar* tax is to be abolished. Icelanders are to have in Norway the most extensive rights which they have ever enjoyed there, and which have been promised them in your letters. You (King Haakon) are also to maintain peace for us, as God may give you strength to do so. The jarl's authority we will acknowledge so long as he keeps faith with you and peace with us. This agreement we and our descendants will keep in good faith so long as you also faithfully keep it, but we consider ourselves released from all obligations, if in the opinion of the best men, it shall be broken. To this end I place my hand on the Holy Bible, and call God to witness that I grant King Haakon and Magnus under

<sup>110</sup> Sveinbjorn Johnson, Book Review (1935), 24 GEO. L. J. 223, 225. See also Sigurd B. Severesen, Book Review (1936), 21 IOWA L. REV. 821, 822.

<sup>111</sup> For an excellent discussion of Icelandic Law since 1262 see Olafur Larusson, "Den islandske rattens utveckling sedan ar 1262," (1950) 35 SVENSK JURISTTIDNING 241-259.

oath land, thanes and eternal taxes according to the conditions here named, and as the written agreement bears testimony. May God so be merciful to me as I keep this oath, unmerciful if I do not."<sup>112</sup>

It does not appear that any change in the legal order was made at the meeting of the Althing in 1262 when Iceland submitted to the king of Norway. Among the conditions which the Icelanders imposed before submission was that the king should guarantee "peace and the Icelandic laws." Possibly the people believed at the time that their old law, the Gragas, would continue in force and that the king had promised not to alter the law of the land.<sup>113</sup> But it is likely, as even Icelandic authorities such as Professor Larusson concede, that the people must have realized that the new factor of royal power and a foreign power must lead to changes in the law of Iceland.<sup>114</sup> They could anticipate that the king in his dealings with Iceland would apply law, but a law not necessarily identical with the law before 1262. They could also expect that the law as it developed would take account of local conditions in Iceland and not simply those of Norway.

Whatever may be the correct interpretation of the agreement of 1262, it is clear that during the ensuing decades substantial changes in the law were made. The initiative in making these changes came from the king. Moreover, Norwegians were appointed as "lawmen" and as *syslumenn*<sup>115</sup> or magistrates. At this particular time the royal power in Norway was stronger than it ever had been before the prolonged civil war which had gone on since King Sigurd Jerusalemfarer's death in 1130 ended with Earl Skule Baardson's fall in 1240 with a complete victory for the descendants of King Sverri. The victory was one of royal power over the nobility. This inevitably meant that henceforth the king would play a larger role in law development. King Haakon the Old (1217-1263) had begun such work in the latter part of his reign. But the bulk of the work was done by his son, King Magnus (1263-1280). Magnus was one of the most remarkable and industrious lawmakers of the Scandinavian countries, as evidenced by his surname "Lawmender." Magnus was successful in creating a unified and central legal system in Norway long before this occurred in Denmark and Sweden.<sup>116</sup>

<sup>112</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 206-207. For a full discussion see KONRAD MAURER, *ISLAND VON SEINER ERSTEN ENTDECKUNG BIS ZUM UNTERGANGE DES FREISTAATS* (1874) 470-480.

<sup>113</sup> "There was some grumbling when Magnus, contrary to the agreement, promulgated a code for Iceland, which though recognizing peculiar Icelandic conditions, was not unlike the Norwegian." KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 170.

<sup>114</sup> The Icelandic system "had not suffered to secure the reign of law against the oppression of oligarchic powers, nor did it accord with the new principle of monarchy." Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 553. See also HJALMAR H. BOYESEN, *A HISTORY OF NORWAY* (1900) 443-444.

<sup>115</sup> These officials were royal officials in charge of the king's business in a "sysla" or county. LAURENCE M. LARSON, *THE EARLIEST NORWEGIAN LAWS* (1935) 425. See also STEFAN EINARSSON, *ICELANDIC* (1949) 464.

<sup>116</sup> In 1319 the Norwegians "were presumably the best situated nation in Europe with respect to legal organization and obedience to law." Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 552.

His law revision in Norway proceeded in two stages. The first in 1267 to 1269 was work on the old Norwegian provincial laws. Archbishop Jon the Red of Norway protested against any revision of the church law by the king and the Frostathing upheld the archbishop.<sup>117</sup> The second period was a development of the general national law from 1271 to 1274.<sup>118</sup> King Magnus had two codes drafted for Iceland.

The earlier code was sent to Iceland in 1271 for submission to the Althing.<sup>119</sup> Sturla Thordsson, an Icelander, had assisted the king in drafting it. The Althing was not in a very receptive mood. The Code was considered section by section in three long sessions. During the first year of consideration one of its books, that on "thing" organization and procedure, and two of the chapters of the book on inheritance were accepted. But it was not fully accepted until 1273, and then only because the Icelandic chieftains who were close to the king intervened. According to Professor Larusson it is not at all clear what had caused the opposition to acceptance of the book. It was given the name *Jarnsida*, or "Ironsides," probably from its binding. It exists even to this day in the handwriting of that time. But the handwriting is not complete. Three or four pages seem to be missing. This gap is not very important, hence we can gain a clear conception of its form and contents. The gaps may be reasonably filled by examining the context. The old law was now supplanted. The old chieftainships disappeared, being thought inconsistent with royal power. There gradually arose a group of men of substance and prominence who loyally supported the government. Under the "Ironsides" code two lawmen were to govern the country and the *logretta* was limited to judicial functions. The characteristic features of the Althing were abolished: the four district courts, the *fimtardómr* or appellate court, and the office of law speaker. The "thing" system was reorganized to correspond to the Norwegian system. The *voldsmadr* or royal magistrate was to choose a certain number of men from each "thing" district 140 in all, to constitute the "thing." From these the lawman was to select three from each *thing* district, in all 36, to sit in the *logretta*. As has been seen, a *lawman*, supplanted the *law speaker* as in Norway. After 1277 there were two lawmen. Judicial authority was to be in the *logretta*. Legislative authority was to be in the Althing and the king conjointly. Either might take the initiative in legislation. In practice the *thing* now became mainly a judicial tribunal as it had in Norway. There was no longer a recitation of the laws at meetings of the Althing. The Althing lost its popular character as its members now consisted of chosen representatives, and its size was soon reduced.

The "Ironsides" represents the relatively hasty and crude efforts in the early part of the reign of King Magnus. On the one hand it combined provisions of the

<sup>117</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 167.

<sup>118</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 164; Lester B. Orfield, "Norwegian Law," (1950) 23 TEMP. L. Q. 257, 267.

<sup>119</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 213-215; JON STEFANSSON, DENMARK AND SWEDEN WITH ICELAND AND FINLAND (1917) 161.

Norwegian law not suitable for Iceland. On the other hand it omitted several essential rules of the prior Icelandic law. Consequently, it added confusion and disorder to the law of Iceland. But fortunately a new national code had come into force in Norway about 1275. Use could now be made of the experience gained in the drafting of that code.

The second code was sent to Iceland in the summer of 1280, and was called the "Jonsbok" after Jon Einarsson, the lawman, who brought it back to Iceland and who most likely was one of its chief compilers.<sup>120</sup> It was presented for approval to the Althing in 1281, and approval with reservations was obtained. The saga of Bishop Arni Thorkaksson<sup>121</sup> describes its passage by the Althing. Three groups, clergy, nobles and peasants, gave their views about the book, and the saga sets forth the views of the priests and peasants. The criticisms of the clergy generally came to this: the law of the church is the best security against the temporal power. The opposition of the clergy was simply one part of the battle then going on in Norway between the archbishops in Trondheim and the regency of leading nobles, which then exercised the royal power in Norway.<sup>122</sup> The objections of the peasants were not of a unified character but went to individual details in the book, chiefly as to the rules of property law. It is notable that no one proposed to go back to the Law of the Gragas. The debate became rather heated. But the upshot was that the book was taken as law except for a few chapters.<sup>123</sup> One can determine to some extent from the handwriting to the Jonsbok which these chapters were. Provisions in the Code peculiar to Iceland are "in the law of descent, those regarding support of the destitute; in the law of land-leases, those regarding separation rights; and provisions in reference to marine law and taxation."<sup>124</sup> The number of members of the Althing was reduced to 84.<sup>125</sup> There was established the title of *sylsumadr* for the royal district magistrates. Iceland was divided into districts administered by the *sylsumenn*.

The provisions of the Jonsbok as to taxes were very moderate.<sup>126</sup> Only one half of the whole sum was to be paid to the king. The other half was to be kept in Iceland for the payment of the usual taxes.

The criminal law underwent great changes.<sup>127</sup> Violation of the law was no longer a mere private matter to be settled by the criminal defendant and his victim,

<sup>120</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 553. The Jonsbok is said to have been in force in Greenland from the year 1281. AUSTIN H. CLARK, ICELAND AND GREENLAND (1943) 20. The Jonsbok may be found in NORGES GAMLE LOVE, Vol. I (1846).

<sup>121</sup> On the career of this bishop see KNUT GJERSET, HISTORY OF ICELAND (1925) 217-225.

<sup>122</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 159, 166; GJERSET, HISTORY OF ICELAND (1925) 221.

<sup>123</sup> The clerical opposition was offset when the royal commissioner pointed to the excessive burden of the tithes paid to the church. KNUT GJERSET, HISTORY OF ICELAND (1925) 221.

<sup>124</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 553.

<sup>125</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 215.

<sup>126</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 208.

<sup>127</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 215-216.

but as a crime for which the defendant must answer to the government. Banishment for serious crimes was retained. But fines payable to the king were instituted in many cases. There was to be capital punishment as to murder, robbery, rape, counterfeiting, forgery, and seduction.<sup>128</sup>

Early under the new procedure the practice grew up of summoning persons to Norway for trial there.<sup>129</sup> Norwegians were appointed as lawmen and *sylsumenn*. At the debate in 1281 on the adoption of the Jonsbok the chieftains made a specific demand that only Icelanders be appointed to the higher offices. The Council of Regency in the reign of King Eirik Magnuson (1280-1299) granted this condition, but no specific provision was incorporated into the Icelandic laws.<sup>130</sup> When Eirik's brother, Haakon, succeeded him as king in 1299 the Icelanders protested again, and did not pledge their allegiance until 1303. In 1302 it was decreed that only Norwegians could trade with Iceland.

As has been seen, within two decades of the union with Norway two new codes were adopted in Iceland. The "Gragas" no longer prevailed as law. What then were the sources of the new law? The "Ironside," in the opinion of Professor Larusson, was manifestly based on a Norwegian code, copies of which no longer exist, resembling the Gulathing Law of 1267 or the Frostathing Law of 1269.<sup>131</sup> This code was to a large extent a compilation of the older Gulathing and Frostathing laws. But the Norwegian code was not the sole source of the Ironside. Its authors had also made use of the "Gragas." Professor Larusson points out that in 24 out of the 141 chapters appear rules arising out of the earlier Icelandic law, and possibly the missing gaps in the law had the same origin. But the Norwegian materials constitute the greater part of the book, and this was clear to the Icelanders of that time. Contemporaneous writings refer to the Ironside as the "Norwegian Code," and the contents of the book as "Norwegian law."

With respect to the development of the Jonsbok one must proceed more cautiously. The chief source was the national law of King Magnus Lawmender. Much of it is taken from that law virtually unchanged. To a very large extent it follows that law as to divisions into books and chapters. Thus the Jonsbok contains one book on the law of warfare, as in Magnus' law. But it contains two books on maritime law not found in Magnus' law, and a short book on the duty of citizens to the king. It is significant that the "Gragas" is much more fre-

<sup>128</sup> Capital punishment was not used as a penalty during the period before 1262. BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE*, Vol. I, 312, 344 (1912). For discussion of criminal law prior to 1262 in Iceland see KONRAD MAURER, *VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE*, Vol. V, pp. 3-286 (1910).

<sup>129</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 220, 221, 227, 230, 232.

<sup>130</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 228.

<sup>131</sup> This law is said to be the civil law of the Gulathing Law of 1267 of Norway, as it contains provisions clearly intended for Norway with such changes as were deemed necessary for Iceland. Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 550. The same writer also calls it a "compilation of regulations from the earlier laws of the 'Gula—and Frostathing's', and was presumably a copy of the 'Gula-thing' code adopted in 1267." *Ibid.*, 553.

quently used as a source here than it is in the "Ironsides." Professor Larusson points out that it was the direct source of 105 of the book's 251 chapters. It is the indirect source of various other parts, as the Jonsbok adopted certain rules from the "Ironsides" and the national law of Magnus, which in turn came from the Gragas. Consequently, when the Jonsbok was accepted as law, much of the old law still remained in force.

Some students have concluded that the acceptance of the two codes should have created full legal unity between Norway and Iceland. An Icelandic law professor of today has rejected this conclusion.<sup>132</sup> First and foremost, as he points out, the method of procedure of the king in presenting both laws to the Althing and asking their consent shows that he fully recognized Iceland as a separate law-making jurisdiction, which had its own law. A comparison of the "Jonsbok" with the national law of Magnus shows distinctly the special position which Iceland occupied among the areas under the king. King Magnus sought through the development of his national law for a complete legal unity in Norway. All Norway was to have one law, instead of each subdivision having its own separate law. But formally, he proceeded on the basis of the prior local divisions.<sup>133</sup> He never developed a code for the whole nation without each district receiving its own code. In the Gulathing district it was called the Gulathing Law; in the Frostathing district, the Frostathing Law. Unity was attained by having all these laws similar in content. A chapter in the book as to procedure of the "thing" was different as to each district. This was proper as at that time each district had its individual peculiarities as to procedure. The same situation prevailed as to the code which the king sent to the Faroe Islands. It was identical in all respects with the Norwegian Code, and legal unity was secured. On the other hand, the "Jonsbok" was not identical with the national law of Norway. It departs from the Norwegian in a multitude of details and the departures are so extensive that it appears that the same code is not involved and that here there is no legal unity. It must be conceded, however, says Professor Larusson, that the adoption of the two codes brought in a comprehensive reception of Norwegian law, and as to some topics, such as criminal law and "thing" procedure, a nearly complete reception.

The "Ironsides" prevailed only from eight to ten years.<sup>134</sup> But the "Jonsbok" was for many generations the chief source of law in Iceland. The opposition to the "Jonsbok" soon disappeared, not so much from diminution of suspicion of the royal power as from the fact that the peasants did not feel inclined to criticize what they felt was their own code.

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<sup>132</sup> Olafur Larusson, "Den islandske rattens utveckling sedan år 1262," (1950) 35 SVENSK JURISTTIDNING 241, 244-245.

<sup>133</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 551.

<sup>134</sup> JON STEFANSSON, DENMARK AND SWEDEN WITH ICELAND AND FINLAND (1917) 161. The "Ironsides" may be found in NORGES GAMLE LOVE, Vol. I (1846).

For several centuries the *Jonsbok* was the most widely read book in Iceland. Absalon Pedersen Beyer, the Norwegian humanist who died in 1574<sup>185</sup> states that in the middle of the sixteenth century it was the custom in Iceland for young men to memorize the codes despite their substantial size,—boys learned to read with the help of the codes, and it is known that as late as about 1670 Paul Vidalin, subsequently a well known lawman, thus learned to read. Printing came in between 1530 and 1578.<sup>186</sup> But there still exists more than one hundred handwritten manuscripts of the law written before 1578. In the sixteenth and seventeenth centuries many began to find certain parts of the law difficult to understand. Consequently, Iceland's first legal literature arose, almost all of it concerning the "*Jonsbok*." This literature consisted mostly of explanations of its rules. There is a considerable amount of literature of this kind, the authors being lawmen, provincial judges, clergymen and farmers. Very few of these writings were printed, but there are quite a few handwritten manuscripts, indicative of the popular interest. In the seventeenth century there were proposals to revive the "*Jonsbok*." The chief proponent was Gisli Hakonarson, who induced one of the ablest lawyers in the country, provincial judge Thorsteinn Magnusson, to ascertain which of the rules needed revision as well as the method of revision. The study of Magnusson still exists in handwritten form, as well as his proposal for a new "thing" procedure. But nothing came of his work. The lawman, Paul Vidalin,<sup>187</sup> who died in 1727, prepared a notable draft for a code, but the Danish government withheld its consent.<sup>188</sup>

It is a remarkable fact that the "*Jonsbok*" to some extent is still law in Iceland. It is true that several individual rules have been repealed, and many others have become so obsolete as not to be regarded in force. But Professor Larusson points out that in the most recent volume of the Icelandic laws in force in 1945 there appear parts of 56 chapters of the "*Jonsbok*" which contained a total of 251 chapters. Some of these provisions involve leasing, wreck and salvage, marking of cattle, and injuries to cattle. English and American lawyers may deem it strange that laws so ancient should still prevail, yet many of these provisions are even older than the "*Jonsbok*," as they were taken from the "*Gragas*." It is therefore fair to say that some of the law of the earlier free state of Iceland still prevails as law today in Iceland.

<sup>185</sup> Concerning him see KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 251, 270, 274; KNUZ GJERSET, *A HISTORY OF THE NORWEGIAN PEOPLE*, Vol. II, 160-162.

<sup>186</sup> KNUZ GJERSET, *HISTORY OF ICELAND* (1925) 309. Following this, Arngrim Jonsson, (1568-1648) rescued the old Icelandic writings, wrote history of Iceland, and made Latin translations for European readers. S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 306. Later Arni Magnusson, who died in 1730, brought the whole collection of manuscripts, old and new, to Copenhagen. JON STEFANSSON, *DENMARK AND SWEDEN WITH ICELAND AND FINLAND* (1917) 164. At the present time there is agitation for the return of the Icelandic manuscripts to Iceland. "The Quarter's History—Iceland," (March 1951) 39 *AM. SCAND. REV.* 55, 56.

<sup>187</sup> He also served on a commission which examined the operation of the laws on trade. KNUZ GJERSET, *HISTORY OF ICELAND* (1925) 338.

<sup>188</sup> Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 567.

During the period of reception of the "Ironsides" and the "Jonsbok" there was also a change in the law of the church.<sup>139</sup> In 1275 there was accepted by the Althing except as to one minor chapter a new "Christian law" or church law developed by Bishop Arni at Skalholt.<sup>140</sup> It was the understanding that it was later to be ratified by the King and the archbishop of Norway. Its reception involved the repeal of the old church law drafted by bishops Thorlak and Ketil in the twelfth century. The proposed new church code, calling for elimination of private ownership of churches and for greater powers in the clergy, was not acceptable to the Icelanders. It resembled in many respects the Norwegian church law drafted by Archbishop Jon of Norway at about the same time.<sup>141</sup> Part of the older church law prepared by Thorlak and Ketil was retained. In 1354 the Norwegian king by royal letter in substance made Archbishop Jon's law the law for Iceland.<sup>142</sup>

After this great period of change in the law of Iceland there followed a long period of stability which lasted until the sixteenth century. Neither the "Jonsbok" nor the national law of King Magnus contained any provisions as to the authority to make laws. In Norway the consequence was that the authority of the law "things" to make laws fell away, and only the king made laws. When the king established laws, they were called "*rettarbol*" or law reforms or supplements. From 1294 to 1314 the King established three "law reforms" for Iceland.<sup>143</sup> They constituted a kind of supplement to the "Jonsbok" and to some extent the reason for their reception was to correct the defects and gaps which the Icelanders had found in the "Jonsbok" and which they had criticized in the debate in the Althing in 1281 over the "Jonsbok." In 1313 the king addressed a letter to the Icelandic people criticizing them because no Althing had met for nine years. In 1314 he issued a new supplement to the Icelandic code providing against bringing Icelanders to Norway for trial except when the lawmen and *syslumenn* were unable to try the case.<sup>144</sup> The demand for new taxes was dropped. But nothing was stated about appointment of Icelanders to office, nor was any assurance given that six ships would be sent to Iceland each year.

But on the whole, the king made but few changes in the Icelandic law during this period. In fact, says Professor Larusson, one can count the number of such changes on one's fingers, and even these few were without great significance.

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<sup>139</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 217-220; KONRAD MAURER, VORLESUNGEN UBER ALTNORDISCHE RECHTSGESCHICHTE, Vol. II, 109-110 (1908).

<sup>140</sup> The "Ironsides" contained no church law in the earlier sense of the word, as the church objected to including ecclesiastical regulations in a general code. But it did include civil affairs even though they rested on religious principles. Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 550.

<sup>141</sup> KAREN LARSEN, A HISTORY OF NORWAY (1948) 165-166; KNUT GJERSET, HISTORY OF ICELAND (1925) 218.

<sup>142</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 238.

<sup>143</sup> Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 553.

<sup>144</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 233.



This seems to indicate that the king was not much interested in Icelandic law development.<sup>145</sup> The same may be said about his representatives in the country. Apparently they were chiefly interested in collecting increased taxes.<sup>146</sup> But few indications can be found that they concerned themselves with problems of lawmaking. In 1354 the king farmed out taxes to the royal governor.<sup>147</sup>

About the year 1300 it became customary that people incorporated the king's "law reforms" in their handwritten lawbooks, and many did not carefully discriminate between Icelandic law reforms and various Norwegian law reforms which had never come into force in Iceland. The consequence was that both were treated as prevailing and decisions were based on them. But at times objections were made as to the application of these Norwegian law reforms to Iceland. In a great inheritance case at the end of the fifteenth century one party based his demand on a Norwegian "law reform" of May 2, 1313. But this view was rejected in the judgment of the lawman and later by the Althing. No attempts were made later to enforce this particular "law reform" in Iceland. By similar use of Norwegian "law reforms" additional Norwegian law was introduced into Iceland, but only on a small scale as the "law reforms" were few and unimportant. The method was a dubious one. Conceivably it arose out of the conception that laws decreed by the king should automatically prevail in all the domains over which he ruled.

As has been seen, the Norwegian law "things" lost their authority to make laws.<sup>148</sup> But, according to Professor Larusson, this did not happen to the Althing. The Icelanders asserted that the Althing had the power to make laws, both in conjunction with the king and separately.<sup>149</sup> The conception arose that the king's law proposals prevailed only on the condition that the Althing consents to them. For example, the Althing annulled some of the royal decrees, and modified some of them. Perhaps now and then some royal proposals were not laid before the Althing and yet were accepted by the people as law, but from the seventeenth century forward the conception was that the king could not prescribe laws for the country without the consent of the Althing.

The Althing made laws independently and without the king's joint action. But often this legislation was of a rather special nature. Some of the determinations

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<sup>145</sup> The trade with the Norwegian islands which had been a royal monopoly since the thirteenth century was not kept up and fewer ships than had been promised went to Iceland. KAREN LARSEN, *A HISTORY OF NORWAY* (1948) 233.

<sup>146</sup> As of about 1350 the royal officials were as follows: two lawmen, several "syslumenn" as administrative officials for larger districts, and a royal governor called "hirdstjorar." KNUT GJERSET, *HISTORY OF ICELAND* (1925) 239.

<sup>147</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 247-248.

<sup>148</sup> Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 542.

<sup>149</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 11-12. But the Althing existed in a modified form chiefly as a court of law with judges selected by the royal officials. King Haakon Magnusson (1199-1219) "took energetic measures to maintain the efficiency of the Althing as a supreme judicial tribunal." KNUT GJERSET, *HISTORY OF ICELAND* (1925) 234.

were not designated as laws, but were judgments and were drawn up in the form of judgments. Before such a judgment could be pronounced it was not necessary that there be a specific law suit between specific persons, but rather a question of a general nature about it, as whether this or that scope shall be given to a law. The court gave its determination in the matter, and the rule thereby enunciated was subsequently followed. The judgment was referred to as prevailing law, and later judgments were based on it. The judgment was thus a proposition of a full law creating character. The Althing was not the only body which handed down such general judgments. They were also often handed down by the thing of the "herred" or local area. When they were concerned, as they often were, with purely local matters, such judgments were considered as binding for the "herred," even though the consent of the Althing had not been obtained. But often such judgments concerned other than local issues and were concluded with a direction to seek the approval of the Althing. Yet examples are to be found of such judgments of the local "thing" treated as if they were laws binding throughout the country. Even today copies exist of many such judgments of a general nature. Nearly all these judgments make references to equivocal or unintelligible rules in the "Jonsbok" or gaps in such rules. In this manner the "Jonsbok" was developed on a national basis. The custom of rendering such judgments of a general nature appears to have arisen shortly after the date when the "Jonsbok" was introduced and it continued until near the end of the seventeenth century. Even during the first decades of the absolute monarchy in Denmark and Norway beginning in 1661 several such judgments were rendered.

### *Danish Influence on Icelandic Law*

#### A. THE PROTESTANT REFORMATION

The Protestant reformation occurred in Iceland in the middle of the sixteenth century.<sup>150</sup> One consequence was greatly to enhance the royal power.<sup>151</sup> The king gained control of the church and its authority and possessions. He took over the possession of the monasteries, and became the greatest land owner of the country.<sup>152</sup> His sources of revenue were thus powerfully enhanced, and a short time later he acquired great business interests, as a business monopoly was established. The relation of the king to Iceland was henceforth much closer. The Icelanders became completely dependent on the Danish government and promised never to carry resistance so far as to employ the sword against the Danish king. King Christian III's church decrees of September 2, 1541 replaced

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<sup>150</sup> Unlike the situation in Denmark and Norway, the Catholic party in Iceland resisted vigorously, the Catholic bishop Jon Arason being executed in 1550. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 280-317. A Jon Arason Festival in his honor was held in 1950 in Iceland where he is regarded as a national hero. "The Quarter's History—Iceland," (March 1951) 39 AM. SCAND. REV. 55, 56.

<sup>151</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 12.

<sup>152</sup> While the original intent had been to use the income to build schools, such intent was not carried out. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 302.

the "Christian law" of Bishop Arni. In 1607 a new church code for Iceland was drafted by Norwegian churchmen upon a formal request of the king, who now became the highest authority in all church affairs.<sup>153</sup> The Protestant bishops had no authority as to tithes, and many cases formerly under church jurisdiction were now transferred to the secular courts. After the Reformation only Icelanders were appointed as bishops.

Just as the political union between Iceland and Norway had paved the way for Norwegian influence on Icelandic law, it could rightly be anticipated that Danish influences would ultimately prevail when Norway's status with respect to Denmark was greatly diminished.<sup>154</sup> The weakening of the Norwegian influence was based on several factors. Norway had been more reluctant than Denmark in accepting the Protestant Reformation. Norway had given continued support to Christian II (1513-1524) who was deposed by his uncle, Frederick I. The Danish nobles were anxious to acquire estates in Norway when the old nobility had died out. About 1536 the Norwegian Council of State disappeared, the only national office left being that of Chancellor, and Norway was virtually incorporated into Denmark. Out of funds appropriated during the Reformation the University of Copenhagen strengthened its law school. Inevitably, changes would eventually occur in the legal development of Iceland which was now in much closer relation to Denmark.

New rules concerning marriage were set forth in Frederick II's decree of June 2, 1587, and mention should also be made of the so-called Great Judgment (*Storidomr*) of July 2, 1564.<sup>155</sup> It was a law creating judgment of the Althing, but one taken on the initiative of the king's Danish representative, and sanctioned by the king on April 13, 1565. The *Storidomr* dealt with the crimes of debauchery, incest, concubinage and adultery, and provided for capital punishment or very severe punishments. Male offenders were hanged, and female, drowned. One half of their property was forfeited to the king, and one half was turned over to needy relatives. As to adultery, capital punishment could be inflicted only for the third offense and there was no forfeiture. Royal decrees of 1576, 1578, and 1594 somewhat mitigated the penalties. The *Storidomr* remained in force until 1838.

These, in the opinion of Professor Larusson, are the most significant and thoroughgoing decrees which were made by the king for Iceland from the Reformation up to the first decade of the eighteenth century. During this period the king made a good many statutes and wrote many open letters which were

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<sup>153</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 305-306.

<sup>154</sup> Danish rule over Norway did not at first result in much change, as "the easy way was followed and the Icelanders were left much to their own devices." S. M. TOYNE, *THE SCANDINAVIANS IN HISTORY* (1948) 306. See also BJÖRN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 11-12.

<sup>155</sup> During the interregnum in Norway from 1533 to 1536 the Icelanders were reluctant to accept the claims of Christian III (1536-1559) who became king in Denmark in 1534. KNUT GJERSET, *HISTORY OF ICELAND* (1925) 285-286.

<sup>156</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 303.

to prevail in Iceland, but these involved no significant changes in law. They deal with isolated details, particularly with matters concerning the church and business. Final appeals lay to the king and his council, who continued to act as a court of last resort until 1661, when the Supreme Court of Denmark was established. The privilege of sanctuary, under which criminals could not be seized in churches, was abolished in 1587. By a law of 1596 the eating of horse meat was forbidden. Thieves were to be hanged, flogged or branded. Minor offenses were to be punished by the pillory, flogging, or heavy fines. From 1625 to 1690 there were about thirty prosecutions for witchcraft though it does not appear that the Danish law had been introduced in Iceland.<sup>157</sup>

### B. ABSOLUTE MONARCHY

In 1662 the Icelanders swore allegiance to Frederick III as absolute monarch.<sup>158</sup> The king thus received unlimited power to make laws for Iceland. Changes in the highest administration occurred from 1683 to 1688. Copenhagen thus became the seat of law making power for the country as well as of its highest administration, and it was always Danes who exercised such power. The Supreme Court of Denmark then became the highest court in the Icelandic system. It is obvious that all this would greatly affect the development of Icelandic law.

For more than twenty years after the introduction of absolutism Icelandic administration remained unchanged. The administrative colleges and government departments in Denmark now gradually assumed the functions of government for Iceland. Iceland became little more than a Danish province. In 1683 a *landfoged* was appointed to receive the taxes and revenues after collection by the *sylsumenn*.<sup>159</sup> The next year a *stiptbefalingsmadr* was appointed to conduct the general administration and adjudicate church cases and two years later an *amtmand*.<sup>160</sup> Since the *stiptbefalingsmadr* did not reside in Iceland, the royal government confined itself pretty much to the collection of taxes.

As a result of the vast increase in royal power the role of the Althing both as to legislation and administration steadily declined until 1800, when it was abolished and replaced by a Supreme Court.<sup>161</sup>

By the sixteenth century the system of landownership in Iceland had made economic and social progress difficult. Much land had been converted into crown estates and church lands, which the people had to cultivate as tenants. Out of 4187 farms only 2116 were privately owned.<sup>162</sup>

<sup>157</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 316-317.

<sup>158</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 331-332. The Icelanders demanded that their old laws be preserved to them, and the governor seems to have acceded to such demand.

<sup>159</sup> KNUT GJERSET, A HISTORY OF THE NORWEGIAN PEOPLE, Vol. I, pp. 237-238 (1927); KNUT GJERSET, HISTORY OF ICELAND (1925) 334.

<sup>160</sup> In 1770 Iceland was divided into two and in 1787 into three amts. KNUT GJERSET, HISTORY OF ICELAND (1925) 334-335.

<sup>161</sup> BJORN THORDARSON, ICELAND PAST AND PRESENT (1945) 12.

<sup>162</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 323-329.

The first census taken in Iceland occurred in 1703 when the population was 50,358, compared with 141,042 in 1949.<sup>163</sup>

During this period of the sixteenth and seventeenth centuries there went on a development such as had occurred in the fourteenth and fifteenth centuries. Just as the earlier judges had brought in Norwegian law reforms in their handwritten law books and adjudicated in accordance with them, so says Professor Larusson, the Icelandic judges now began to base their judgments on Danish laws, which had never been enacted specially for Iceland. This development had already begun in the last decades of the sixteenth century.<sup>164</sup> But it had not become noticeably striking until the last year of the seventeenth century when the setting up of absolute monarchy had occurred. But it would still be accurate to say that the law of the "Jonsbok" had prevailed during this period. As a writer has said, "Since the introduction of absolutism in Denmark in 1660 Iceland had been regarded as an integral part of the Danish kingdom, governed by royal Danish officials, and often according to Danish laws, though it had retained its old code, the 'Jonsbok', which was still in force."<sup>165</sup>

In the ninth decade of the seventeenth century many important changes occurred in the Danish and Norwegian law when King Christian V decreed new codes of law, the Danish in 1683 and the Norwegian in 1687. Neither of these two codes was designed to prevail in Iceland, and the king simultaneously recognized that Iceland was a separate area for law making.<sup>166</sup> But like Magnus Lawmender, the king desired that there be law revision in all his countries, and in 1688 the king wrote to the two "lawmen" of Iceland and invited them to summon men learned in the law to draft a code for Iceland. At the same time the bishops were commanded to draft a new church law to be incorporated into the code. The code was to be drafted as much as possible like the Norwegian code "in order that a conformity and likeness between the Norwegian and the Icelandic law, to the greatest extent possible may hereafter be observed," as the matter is expressed in the royal letter. A draft of an Icelandic code was then made, but for reasons unknown to us the king refused to approve it. Nothing further was done until 1719 when a new group was set up to carry on the work. But the king delayed about approving its work. It was, however, anticipated that eventually

<sup>163</sup> "The Quarter's History—Iceland," (March 1951) 39 AM. SCAND. REV. 55, 56; (Dec. 1950) 38 AM. SCAND. REV. 375, 378. Of the present population 54,707 live in Reykjavik; 84,835 live in the capital and other cities; 15,291 in villages, and 41,626 in rural areas.

<sup>164</sup> King Christian IV (1588-1648) founded the Icelandic Company so that Denmark might profit by the trade formerly going to England and the Hanseatic League. PAUL SINDING, HISTORY OF SCANDINAVIA (1858) 266. The Norwegian code of 1602 was not applied to Iceland. KNUT GJERSET, HISTORY OF THE NORWEGIAN PEOPLE, Vol. I, pp. 192, 268 (1927).

<sup>165</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 377-378.

<sup>166</sup> Thus the following statement by Gunnar Leistikow in HENNING FRIIS, SCANDINAVIA BETWEEN EAST AND WEST (1950) 312-313 seems too sweeping: "The so-called 'Norwegian Law of Christian the Fifth' was to a great extent an adaptation of the corresponding 'Danish Law of Christian the Fifth'. Iceland was at that time a Norwegian dependency, and the Norwegian code was therefore in force in that country also."

the king would approve. But the king now began to apply a new method of law making. In a letter of instruction to Governor Nils Fuhrmann of May 30, 1718 he directed that the Governor should have "due discretion with the law, that it is properly administered, and that the Norwegian law should be followed as to the conduct of formalities and judicial proceedings."<sup>167</sup> A similar direction was given to Governor Peter Raben, in an instruction of March 25, 1720. As a consequence after 1720 the Icelanders began to apply the Norwegian rules of procedure. This direction of the king was repeated in a rescript of May 2, 1732. It is there stated, that until the new code comes into effect, the people and the servants of the law should apply the old code in all matters and the so-called "law reforms", and the royal statutes which had been sent to the country, "except as concerns formalities and court procedure. As to them the Norwegian code shall continue to be applied."

The rules of procedure in the "Jonsbok" had in many respects become obsolete at this time and changes were needed. But this method of authorizing all rules in the Norwegian laws about "formalities and the mode of court procedure," without more exact specification of which provisions they were, and without consideration whether such rules were suitable for local Icelandic conditions, produced great doubts as to some situations, even though they were arguably concerned with "formalities and the mode of court procedure." The confusion was enhanced by the fact that the Norwegian law as never proclaimed in Iceland, and that no legal translation of it was ever made.

This authorization of the Norwegian rules of court procedure was undertaken as an interim measure. The new code was awaited sooner or later. But with the passage of time it became clear that it was not to be a mere interim measure. Preparation of a new code went on during the entire eighteenth century and even into the first decade of the nineteenth. But the code never emerged. The king was unwilling to approve any of the projects which were advanced. Norwegian law continued for a long interval to be the basis for Icelandic court procedure. Even today, says Professor Larusson, a small part of such Norwegian law prevails in Iceland.

After this authorization of the Norwegian court procedure there was a period of stability. Governor Fuhrmann inquired according to which laws one should adjudicate as to issues on which there were no rules in the Jonsbok, "law reforms" or statutes sent to Iceland. At the same time he intimated that in such cases it was the usage to follow the Norwegian law. He furthermore inquired to what extent the older laws should be absolutely applied with respect to several newly created types of crimes which under his view the law was very poorly suited for. In a rescript of February 19, 1734 the king replied to his questions as follows:

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<sup>167</sup> Olafur Larusson, "Den islandske rattens utveckling sedan år 1262" (1950) 35 SVENSK JURISTTIDNING 241, 251.

That when certain details in a case required decisions for which the code ("Jonsbok") lacked determinations, then the servants of the law should rather adjudicate with the guidance of the legal commandments, which had been issued in the country; that is to say, ordinances, decrees and statutes, "and in judgments consult the Norwegian law only when it is suitable, because if the Norwegian law should be used at random and equally with the Icelandic, this would give rise to confusion since some would apply the Icelandic and some the Norwegian law."<sup>168</sup> As to questions about crimes the older Icelandic laws should also prevail, except that "as to homicide and theft cases, with respect to the difference between Icelandic and the law of the present time, the Norwegian law should be followed until the new Icelandic law . . . has been completed and has been most graciously approved by us."

Here again reference to the Norwegian law was authorized as to the above mentioned situations without any narrower specifications, and doubts could arise as to what law gave way and what law prevailed. This authorization, like the former, was to prevail only temporarily, though in fact it prevailed a long time.

In summary, there are broad indications in the rescript that the older Icelandic laws should be followed and respect accorded it; while the Norwegian law is given a very limited scope. The servants of the law must "consult" it in judgments when it is suitable. But as things went, most of them interpreted it as permitting the use of the entire Norwegian law as a subsidiary source of law, and it began to be applied, says Professor Larusson, even as to issues other than "formalities and the mode of legal procedure" or "homicide and theft cases," at random and equally with Icelandic law and thereby produced the "confusion" which the rescript sought to prevent.

Authorization of Denmark-Norwegian law on a broad scale for various types of legal situations continued. In 1769 the fifth book, second chapter, of the Norwegian Code with respect to "Inheritance, Hereditary Succession and Division of Inherited Property" was authorized. In 1831 there was authorized the Danish law as to Majority and Administration of the Property of Infants; and in 1833 the Danish rules and later statutes as to judicial advertisements and publications. The upshot was that with some exceptions the entire Danish criminal law was introduced into Iceland under a statute of January 24, 1838, without close analysis of what was suitable for Iceland and although the Danish criminal law was highly controversial. In this last case the authorization was no mere temporary measure. By this time it had become clear that a separate Icelandic code could not be hoped for. Instead, the aim was that of securing legal uniformity between Iceland and Denmark. This comes to light from language in the introduction to the statute of January 24, 1838, in which it is stated that it "would be very

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<sup>168</sup> Olafur Larusson, "Den islandska rattens utveckling sedan ar 1262" (1950) 35 SVENSK JURISTTIDNING 241, 252.

proper for our beloved and loyal subjects in Iceland completely to participate in the law and justice generally prevailing in our kingdom Denmark."<sup>169</sup>

In addition to the wholesale authorization of Danish-Norwegian law just described, there was a multitude of isolated edicts, statutes, and rescripts. Some of them had been prepared only for Iceland, but others were prepared for Denmark and then sent to Iceland, although some of them were not suitable for Iceland. Some of the law which the authorities and judges applied had neither been prepared for Iceland nor proclaimed in Iceland, but it had become the custom during the sixteenth century that the edicts which the king sent to Iceland should be proclaimed at the Althing. This usage created the greatest confusion, and it may be said that during the eighteenth century there were very few who understood what really prevailed as law for Iceland. The "Jonsbok" more and more ceased to prevail both because its rules had lost their force and because consequently people had ceased to settle their legal rights according to such rules. The Danish-Norwegian law supplanted it. For a second time there occurred a comprehensive reception of foreign law in Iceland.

In connection with such reception it should not be forgotten, says Professor Larusson, that two other factors contributed towards it. One was the power of the Danish Supreme Court to pass on Icelandic cases; the other was the fact that Icelanders studied law at the University of Copenhagen. In 1736 the first Icelandic took his law examination at the University of Copenhagen.<sup>170</sup> From that date to 1908 all students of law from Iceland studied there. Those students returned to Iceland with the theoretical knowledge which they had acquired during their period of study, and obviously Danish law was their chief topic of study. It was quite natural that when later they were called upon to deal with details which were not definitely fixed in the law, they fell back on the knowledge thus acquired and sought their solution in decisions of the Danish courts.<sup>171</sup>

The uncertainty as to which law prevailed was not the only noteworthy matter during this period. Most of the Icelandic laws were written in Danish, a language not understood by a large part of the inhabitants. In isolated cases the government accompanied the Danish text with an Icelandic translation. There are also several instances in which the king signed an Icelandic law text along side with a Danish. But much the larger part of the prevailing laws existed still only in a language

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<sup>169</sup> Olafur Larusson, "Den islandska rattens utveckling sedan ar 1262," (1950) 35 SVENSK JURISTIDNING 241, 253.

<sup>170</sup> As to general university education following the Protestant reformation Icelanders usually studied at the University of Copenhagen or in Germany. The University of Copenhagen was founded in 1479, but its law school did not become very active until the Reformation. KNUT GJERSET, HISTORY OF ICELAND (1925) 278, 308; Orfield, "Danish Law," (1951) 5 MIAMI L. Q. 197, 226. Norway did not have a university until 1811 so attendance in a Norwegian law school was precluded.

<sup>171</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 366. Jon Eriksson translated into Icelandic Holberg's DANNEMARKS OG NORGES GEISTLIGE OG VERDSLIGE STAT (Copenhagen, 1762), containing a rather full account of the legal history of Denmark and Norway.



which most of those subject to the laws did not understand. It was not before 1859 that it was settled by law that the king should sign two law texts, one Danish and one Icelandic.<sup>172</sup> Finally in 1891 it was determined that there should be only one text and that in Icelandic.<sup>173</sup>

This uncertainty which has been described above, the great doubt which prevailed as to which laws governed, naturally created much insecurity and inconsistency in adjudication and administration. It was therefore extremely necessary to seek to solve this maze through a critical approach. The work was undertaken and carried out by Magnus Stephensen.<sup>174</sup> He was not only the people's foremost promoter of culture of his day, but also one of the ablest jurists produced by Iceland. In his writings on legal topics, among them his doctoral dissertation "*Commentatio de legibus quae ius Islandicum hodiernum effeciant*"<sup>175</sup> and in his work as a judge for almost half a century, as lawman (1789-1800) and chief justice and associate justice in the supreme court (1800-1833) he examined the question of what law prevailed with great sagacity and precision. Following his example other judges began to display more discrimination, and when he died in 1833 much of this uncertainty had been overcome. An Icelandic draft of a new code of March 29, 1826 was rejected by the Danish government.<sup>176</sup>

As has been seen the Althing lost its legislative power about the year 1700. During the next century it served purely as a judicial tribunal. The *logrettumenn* were now reduced to twenty, of whom ten should meet yearly at the Althing, but only eight should sit in the *logretta*.<sup>177</sup> In 1777 this number was further reduced to five. Thereafter but little attention was paid to the Althing, and law suits were taken directly to the king. In 1798 the Althing assembled for the last time at Thingvellir, where it had met for 868 years. All later sessions were held at Reykjavik, which then became the capital. On July 11, 1800 the Althing was permanently dissolved by royal order.<sup>178</sup> In its place there was set up a new court, the *landsyfirrettr*, consisting of a chief justice and two associate justices, to exercise the judicial powers firmly vested in the Althing. Forty-five years later the Althing was reconstituted to serve as a consultative assembly by a Danish decree of 1843. Its size was small, twenty members chosen by people who were landowners and six appointed by the king.<sup>179</sup>

172 KNUT GJERSET, HISTORY OF ICELAND (1925) 399.

173 A former Icelandic prime minister has pointed out that the Danish-Norwegian government "never made any attempt to interfere with" the Icelandic language itself. BJORN THORDARSON, ICELAND PAST AND PRESENT (1945) 8.

174 KNUT GJERSET, HISTORY OF ICELAND (1925) 345-353, 357-361.

175 This volume, published in 1819, is cited as a standard treatise on Icelandic legal philosophy by Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 573.

176 Ebbe Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (1912) 567.

177 KNUT GJERSET, HISTORY OF ICELAND (1925) 346.

178 The dissolution was suggested by the great Icelandic jurist Magnus Stephenson who thought the Althing useless and out of date. KNUT GJERSET, HISTORY OF ICELAND (1925) 349.

179 KNUT GJERSET, HISTORY OF ICELAND (1925) 374-375, 377.

### C. CONSTITUTIONAL GOVERNMENT IN DENMARK

In 1848 the Danish king declared that he would henceforth act as a constitutional monarch and a new Danish Constitution became effective in June 1849. Governmental officials and the collegial departments in Copenhagen, particularly the Chancery and the *Rentekammer* had previously assumed the responsibility for the handling of Icelandic affairs both as to law making and administration. The Chancery controlled judicial affairs and the *Rentekammer* supervised administrative and commercial affairs, and both were under the king.<sup>180</sup> They took the initiative as to innovations in the law and they prepared all new laws. This system prevailed during the entire period of absolute monarchy from 1662 until 1849, when the Danish Constitution was adopted. Previous to 1662 the litigant might apply directly to the king, thereafter he had to proceed through these officials. In 1849 the various Danish ministers took over the conduct of such Icelandic affairs as necessarily involved their departments. This continued to be the situation until 1874 when Iceland got its first constitution and authority to pass laws for purely local Icelandic matters. As a matter of strict law the Danish king remained supreme in Iceland after 1849 even though he did not so remain in Denmark, as the Danish constitution did not apply to Iceland.<sup>181</sup> The Danish jurist J. E. Larsen argued in 1855 that Iceland was an integral part of Denmark.<sup>182</sup> Jon Sigurdsson wrote a book in reply refuting such contention.<sup>183</sup> The Danish Rigsdag proceeded to enact regulations regarding Icelandic trade, and debated the Icelandic budget without consulting the Althing.<sup>184</sup>

### D. THE ICELANDIC CONSTITUTION OF 1874

Beginning in 1874 Icelandic affairs were placed under the Danish Ministry of Justice until 1904.<sup>185</sup> A governor or *landshofdingi* was appointed to reside in Iceland to represent the king. The Althing was divided into two houses with 24 members in the lower house and 12 in the upper. The people elected 30 members and the crown appointed six members.<sup>186</sup> In 1904 a separate Icelandic ministry was established in Iceland itself. The offices of the *landshofdingi* and the two *amtmenn* were abolished.

From 1849 the Danish ministers who now conducted Icelandic affairs continued, as had the collegial government departments, to take the initiative in Icelandic law development. In the opinion of Professor Larusson law development

<sup>180</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 335.

<sup>181</sup> BJORN THORDARSON, ICELAND PAST AND PRESENT (1945) 13. The Danish Constitutions of 1849, 1855 and 1866 were not expressly made applicable to Iceland. KNUT GJERSET, HISTORY OF ICELAND (1925) 384, 398, 405.

<sup>182</sup> OM ISLANDS HITTILVAERENDE STATSRETLIGE STILLING.

<sup>183</sup> OM ISLANDS STATSRETLIGE STILLING.

<sup>184</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 398.

<sup>185</sup> As to the Danish law of 1871 and the Icelandic Constitution of 1874 see KNUT GJERSET, HISTORY OF ICELAND (1925) 406-412.

<sup>186</sup> JON STEFANSSON, DENMARK AND SWEDEN WITH ICELAND AND FINLAND (1917) 166.

between 1849 and 1874 was relatively slight. An inheritance law was enacted in 1850 and a general criminal code in 1869. Both laws were translations of Danish laws with some slight changes. Icelandic trade was made free to all nations in 1854. Freedom of the press was established in 1855. The ownership of all wrecks thrown ashore, which had been taken away by a royal ordinance of 1595, was restored to the Icelanders. During this period the Icelanders sought a legislature free from Danish control, independence for Icelandic officials, and abolition of the right of the Supreme Court of Denmark to render decisions in purely Icelandic cases.<sup>187</sup>

From 1875 to 1903 when the Danish Minister of Justice participated in the handling of Icelandic affairs and the Althing had gotten authority at biennial sessions to make laws for the separate local matters, many important laws were initiated by the government and adopted for Iceland.<sup>188</sup> Some of them were uniform Scandinavian laws, such as the Law of Exchange of 1882, the Company Law of 1903 and the Sale of Goods Law of the same year. Other laws were translations of Danish laws with slight changes, such as the law concerning distribution of inheritance of 1878, that concerning seizure for debt of 1885, that concerning executive measures of 1887, that concerning distribution of bankrupt estates of 1894, and that concerning the economic relations of husband and wife of 1900. Many other laws of less significance were enacted during this period, sometimes at the initiative of the government and sometimes following proposal by members of the Althing. In 1882 a law gave widows and other unmarried women over 25 and in independent circumstances a right to vote in local and church affairs.<sup>189</sup> A law of 1884 required a landowner not making use of his land to make it available to others. Professor Larusson concludes that on the whole the legal development of this period was such as to bring it in closer accord with the Danish law.

The election law of 1877 divided Iceland into nineteen election districts, eleven of which elected two representatives each and eight elected one each.<sup>190</sup> Suffrage was confined to males twenty five years or more in age who paid taxes. Office could be held only by voters thirty years or over who had settled in the European part of the Danish realm for five years.

There was considerable legal writing and research in the nineteenth century.<sup>191</sup> Jon Sigurdsson together with Oddgeir Stephenson carried on a comprehensive

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<sup>187</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 376-408.

<sup>188</sup> However, more than fifty bills passed by the Althing were vetoed by the king on the advice of the Danish Minister of Justice. JON STEFANSSON, *DENMARK AND SWEDEN WITH ICELAND AND FINLAND* (1917) 167.

<sup>189</sup> P. SCHWEITZER, *ISLAND LAND UND LEUTE* 68.

<sup>190</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 412.

<sup>191</sup> P. SCHWEITZER, *ISLAND LAND UND LEUTE* 151; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 375-377; Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 531, 573, 576.

and significant assembly of the laws governing Iceland. Sigurdsson published the first volume of *Diplomatorium Islandicum*. Vilhjalmur Finsen published a critical study of the *Gragas*. Beginning in 1874 and concluding in 1910 the German scholar Konrad Maurer published comprehensive studies of Icelandic law and legal history prior to 1262.

### *Icelandic Law Since 1904*

Under the constitutional change of October 3, 1903 Iceland got its own minister, later increased to several ministers, who was to be responsible to the Althing.<sup>192</sup> The minister was to reside at Reykjavik and speak and write in the Icelandic language. This was the beginning of Parliamentary government in Iceland.<sup>193</sup> The highest administrative power was now located in Iceland in the hands of Icelanders. Obviously they would have a more intimate knowledge of the condition of the country and greater interest in its affairs than Danish ministers could have. It would have been strange if this great change did not result in a comprehensive legal development. This expectation was amply realized. Of the law now in force in Iceland about ninety percent has been enacted since 1904.<sup>194</sup>

Up to 1904 apparently the Danes had assumed that Iceland was an integral part of the Danish kingdom.<sup>195</sup> But the Icelanders had never admitted this and asserted that the 1262 agreement with Norway established only a confederate union. Questions arose as to Icelandic commerce and a separate flag, just as such questions arose out of the union between Norway and Sweden from 1814 to 1905. The separation of Norway from Sweden in 1905 encouraged the Icelanders to seek a similar separation from Denmark. In 1907 a commission of seven Icelanders and thirteen Danes was appointed to draft a new law defining Iceland's position in the Union. In the election of 1908, at which time the Australian system of secret ballot was first used, the draft prepared by the commission was defeated, the vote being 3475 in favor and 4671 opposed. The draft was thought not to go far enough in making Iceland independent. In 1909 a law for the prohibition of the sale of liquor was enacted. This was one of the earliest laws of any nation on that subject. In 1913 the king sanctioned a separate flag for Iceland. In 1915 the king sanctioned constitutional amendments passed by the Althing in 1913 and 1914 providing for an Icelandic ministry in Reykjavik responsible to the Althing, the number of cabinet members to be fixed by law. The Althing was to have forty

<sup>192</sup> As to the steps leading up to this see KNUT GJERSET, *HISTORY OF ICELAND* (1925) 425-430.

<sup>193</sup> BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 13-14; JON STEFANSSON, *DENMARK AND SWEDEN WITH ICELAND AND FINLAND* (1917) 167-168; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 428-430. The Althing was to meet every other year for eight weeks, and to consist of forty members of whom thirty-four were chosen by the people, and six by the king. While selected as a single chamber it was to split itself into two sections—the upper of fourteen and the lower of twenty-six members.

<sup>194</sup> Olafur Larusson, "Den islandske rattens udvikling sedan år 1262," (1950) 35 *SVENSK JURISTTIDNING* 241, 256.

<sup>195</sup> For discussion of Icelandic affairs from 1904 to 1918 see KNUT GJERSET, *HISTORY OF ICELAND* (1925) 430-449.

members, subject to change by law. Thirty four members were to be chosen by separate constitutions for terms of six years and six at large for terms of twelve years. The upper branch of the Althing was to consist of the latter six together with eight elected by the thirty-four from their own number. Only half the total membership was to be elected at each election. Persons twenty five years in age including women, could vote for the district representative, and persons thirty five for the representatives at large. The Althing was to meet biennially. In 1915 women received the franchise. In 1917 the size of the cabinet was fixed at three.

The extensive legal development during this period cannot be explained only from the fact that the country had been given the power to initiate laws. The principal cause was the tremendous change which had occurred in social and economic matters since 1904.<sup>196</sup> When the Althing got the law making powers for Iceland's separate affairs in 1874, it was substantially correct to say, as does Professor Larusson, that Iceland was a society of peasants living almost as in the Middle Ages. The country was homogeneous and not cosmopolitan in character. People could manage without many of the rules which seem indispensable in a modern society as the circumstances productive of such a society were not present. It followed that the legal development was of a limited character. During the period of thirty years prior to 1904 this slowly began to change. Since 1904 the changes have been more rapid and on such an extensive scale that a complete revolution has occurred as to nearly all areas of national activity. There are but few examples of a society which has undergone similar thorough going changes in so short a period of scarcely fifty years.

These social and economic changes imposed a great burden on the law makers. A legal framework around the new society had to be created. On many occasions the rules of law had to be developed from the very beginning as to topics on which there had been no prior law. In other cases old rules of law required reexamination and revision.<sup>197</sup> The latter work produced some unequal results, but did at least display the determination of the country to establish a new order subject to law.

Among various things which have promoted an independent development of Icelandic law, and will continue to prompt it, is the fact that the highest court in the Icelandic system now is a local court. In the Danish-Icelandic Union of 1918 it was provided that the Supreme Court of Denmark should be the court of

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<sup>196</sup> For a description of such changes see BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 16-29, 39-44; KNUT GJERSET, *HISTORY OF ICELAND* (1925) 453-458. One may gain valuable insights from the following Icelandic novels which have been translated into English: GUDMUNDUR KAMBAN, *THE VIRGIN OF SKAHOLT* (Little Brown and Co., 1935); GUNNAR GUNNARSSON, *SHIPS IN THE SKY AND THE NIGHT AND THE DREAM* (The Bobbs-Merrill Co., 1938); KRISTMANN GUDMUNDSSON, *MORNING OF LIFE* (Doubleday Doran Co., 1936); HALLDOR LAXNESS, *SALKA VALKA* (Houghton-Mifflin Co., 1936) and *INDEPENDENT PEOPLE* (Alfred A. Knopf, 1946).

<sup>197</sup> A large part of such law was customary law. Ebbe Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* (1912) 568.

last resort in the Icelandic system until Iceland should decide to establish a supreme court setting in Iceland. Such a decision was made in the following year, and the new Supreme Court of Iceland began its work in 1920.

### *Uniform Scandinavian Laws*

In the preparation of the new Icelandic laws obviously models from other nations have often been sought. In addition to the Law of Exchanges of 1882 and the Company Law of 1903 the following such laws have been adopted by Iceland: maritime law, the law as to the rights of seamen, the sale of goods, contracts, the new laws as to checks all without essential changes.<sup>198</sup> The rules of family law have been developed in close connection with the law of the other Scandinavian nations.<sup>199</sup> But aside from these laws, the old method of simply translating foreign laws for adoption in Iceland is used very rarely. But almost all the foreign models which have been followed have come from the Scandinavian nations. In 1919 a reciprocity convention between Denmark, Norway and Sweden as to industrial accident insurance was signed; reciprocity was extended to Iceland in 1927.<sup>200</sup> In 1937 all these countries and Finland concluded a new convention that extended the principles to cases in which the injured worker was not a resident of the country where he was injured. In 1926 Denmark and Norway signed a health insurance convention enabling members of an approved health insurance society in one country to be transferred to a similar society in the other irrespective of age or health. In 1939 Iceland signed a similar convention with Denmark. This convention was revised in 1948 to make it harmonize with the new Icelandic national insurance law. It seems likely that Iceland will make similar agreements with Norway and Sweden.

An Icelander has pointed out that whatever the factor of Icelandic law may be, Iceland wishes to profit from the drafting of uniform Scandinavian laws, even though Iceland has not taken as an extensive part in such work as the other Scandinavian nations.<sup>201</sup> After World War II Iceland was invited to participate in such work, but because so few persons could be found to undertake it and those who could most usefully participate were busy with other matters, it was impossible for Iceland to accept the invitation. Nevertheless the Icelanders wish to follow such developments and appreciate having the opportunity to do so.<sup>202</sup> Moreover the Icelanders feel as one of the Scandinavian nations and that "they

198 H. Munch-Petersen, "Main Features of Scandinavian Law," (1927) 43 L. Q. REV. 366, 367-369.

199 Sigrid Beckman, "Vinding Kruse: En Nordisk Lovbog," (1950) 35 SVENSK JURISTTIDNING 879, 888.

200 HENNING FRIIS, SCANDINAVIA BETWEEN EAST AND WEST (1950) 314.

201 Olafur Larusson, "Den islandska rattens utveckling sedan ar 1262," (1950) 35 SVENSK JURISTTIDNING 241, 259. The Scandinavian Conference of Lawyers as of 1948 had 458 members from Denmark, 394 from Finland, 346 from Sweden, 214 from Norway and 40 from Iceland. Three Icelanders attended the Eighteenth meeting at Copenhagen in 1948. See "Adertonde Nordiska Jurist-Motet," (1948) 33 SVENSK JURISTTIDNING 611.

202 Iceland was represented for the first time as to social security legislation in 1948. HENNING FRIIS, SCANDINAVIA BETWEEN EAST AND WEST (1950) 313.

are closer to them than any other people in culture and views of life."<sup>203</sup> Icelandic law is most closely related to the Scandinavian law. It is to the Scandinavian law that the Icelanders are likely to turn for models, even as to topics not covered in the uniform laws.<sup>204</sup> "Icelandic law has always been Scandinavian law, and we desire that it continue to be Scandinavian in the future."<sup>205</sup>

Iceland participated in the fourth Scandinavian Conference on Criminal Law held at Helsinki, Finland in February 1950, the topics of discussion being youthful criminals with special reference to work-schools and greater unity as to criminal statistics.<sup>206</sup> Iceland invited the fifth conference to meet in Iceland. Iceland participated in 1949 and 1950 in Scandinavian conferences on aircraft.<sup>207</sup> The four Scandinavian foreign ministers held their annual fall meeting for the first time in Iceland in 1950.<sup>208</sup>

### *The Constitution of 1944*

*Civil Liberties.* Article 1 of the Constitution of June 17, 1944 provides that "Iceland is a republic with a constitutional government."<sup>209</sup> Article 63 and 64 provide for freedom of religion. Article 62 provides that the "Evangelical Lutheran Church shall be the state church and as such shall be supported and protected by the State."<sup>210</sup> Under Article 65 an arrested person "shall be brought before a judge without undue delay, and if not released at once, the judge shall, within twenty-four hours, give a reasoned ruling as to whether he shall be detained." Under Article 66 the "home shall be inviolate. Houses may not be searched, nor any letters or documents be detained and examined, except by judicial warrant or a special provision of law."

Under Article 67 the "right of private property is inviolate." Article 69 provides for "individual freedom of employment." Article 70 provides for public support of persons unable to support themselves. Article 71 provides for

<sup>203</sup> Danish is still taught in Icelandic schools. The Icelanders are 98 per cent Lutheran as are the Danes and Swedes; the Norwegians being 97 per cent and the Finns 96 per cent. More books are published in Iceland per capita than in any other country, one for each 466 persons, while the number in Denmark is 1,106; in Norway 1,588; in Sweden, 2,309; in Great Britain 3,205; and in the United States 12,497. BJORN THORDARSON, *ICELAND PAST AND PRESENT* (1945) 34.

<sup>204</sup> But doubting the feasibility and wisdom of a single comprehensive Scandinavian code see Thordur Eyjolfsson, "Vinding Kruse: En Nordisk Lovbog." (1950) 35 *SVENSK JURISTTIDNING* 883. The Icelandic Law of Majority of June 5, 1947 does not follow the Danish-Norwegian-Swedish Law of 1922-1927. *Ibid.*, 886.

<sup>205</sup> Olafur Larusson, "Den islandske rattens utveckling sedan ar 1262," (1950) 35 *SVENSK JURISTTIDNING* 241, 259.

<sup>206</sup> (1950) 35 *SVENSK JURISTTIDNING* 306, 999; *NORDISK TIDSSKRIFT FOR KRIMINALVIDENSAB* (1950) 260 *et seq.*

<sup>207</sup> (1950) 35 *SVENSK JURISTTIDNING* 1000.

<sup>208</sup> "The Quarter's History—Iceland," (Dec. 1950) 38 *AM. SCAND. REV.* 375.

<sup>209</sup> The Constitution is set forth in AMOS J. PEASLEE, *CONSTITUTIONS OF NATIONS*, Vol. II, 171-178.

<sup>210</sup> Of the Icelanders, 98 per cent are Lutherans. Under Icelandic law ministers are elected by popular vote in the various parsonages. "The Quarter's History—Iceland," (June 1950) 38 *AM. SCAND. REV.* 166, 167.

education out of public funds for children of persons unable to pay such costs. Article 72 guarantees freedom of the press.<sup>211</sup> Article 74 guarantees freedom of assembly.

*The President.* Under Article 2 the executive power "is exercised by the President and other governmental authorities." Under Article 3 he is "elected by the people." Under Article 4 he must be at least 35 years of age. Under Article 5 he is elected by "a direct secret ballot, and a plurality is sufficient." He must previously have been proposed by from 1500 to 3000 persons. Under Article 6 he serves for four years. Under Article 8 if the office becomes vacant, the presidential power is exercised by the Prime Minister, the speaker of the United Althing and the Chief Justice of the Supreme Court, and a majority of them prevails. Under Article 11 he ceases to hold office if this is approved by a plebiscite held after a three fourths vote of the United Althing. Article 13 provides that the "President exercises his authority through his ministers." Under Article 15 the "President appoints the cabinet and accepts ministerial resignations." Under Article 19 the "Presidential signature countersigned by a minister validates a legislative measure or an act of government." Under Article 20 he appoints governmental officials. Under Article 21 he "concludes treaties with other states. Except with the consent of the Althing, he may not make such agreements if they entail renouncement of or servitude on territory or territorial waters or if they imply constitutional changes." Under Article 22 he "shall summon the Althing every year and determine when the session shall close." He may summon special sessions. Under Article 24 he "may dissolve the Althing" thus bringing about a new election within two calendar months after dissolution. Under Article 25 he may submit bills to the Althing. Under Article 26 a bill passed by the Althing becomes law after his approval; if he disapproves, it still becomes law, but is submitted to a plebiscite which may reject the law. Under Article 28 in the "event of extreme urgency" he may issue provisional laws between sessions of the Althing. But such laws must not violate the Constitution, and must be submitted to the Althing when it reopens; if the Althing does not approve it becomes invalid. Under Article 29 he "grants pardon and ammunty."

*The Ministers and the Cabinet.* Under Article 13 the "President exercises his authority through his ministers. The cabinet has its seat in Reykjavik." Under Article 14 the "cabinet is responsible for all acts of the government. The responsibility of ministers is established by law." Under Article 15 the "President appoints the cabinet and accepts ministerial resignations. He determines the number of ministers and assigns their duties." The new cabinet which took office on December 6, 1949, consisting of members of the Conservative party, known in Iceland as

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<sup>211</sup> A majority of the Supreme Court therefore found invalid a statute providing that no one might publish old Icelandic texts except by permission of the Government. Gunnar Thoroddsen, "Comments on the Constitution of Iceland" in AMOS J. PEASLEE, CONSTITUTIONS OF NATIONS, Vol. II, 179, 187 (1950).



the Independence Party, is made up of five persons: Olafur Thors, Prime Minister and Minister of Social Affairs; Bjarni Benediksson, Minister of Justice and of Foreign Affairs; Bjorn Olafson, Minister of Finance and of Commerce; Johann Th. Josefsson, Minister of Fisheries, of Industry, and of Aviation; and Jon Palmason, Minister of Agriculture and of Commerce.<sup>212</sup> But in actual practice it is the parliamentary majority which governs the process.<sup>213</sup> It is not required that ministers be members of the Althing. Under Article 51 ministers "have the right to attend meetings of the Althing and are entitled to take part in the debates as often as they may desire, subject to parliamentary procedure; but they have a right to vote only if they are at the same time elected members of the Althing." They may introduce bills. Under Article 17 cabinet meetings shall be held in order "to discuss new legislative proposals and important political measures. Furthermore, Cabinet meetings shall be held when one of the ministers so desires." Under Article 18 the "minister who desires to propose a measure shall, as a rule, submit it the President."

*Amendment of the Constitution.* Article 19 provides: "Proposals, whether amendatory or supplementary to this Constitution, may be introduced at regular as well as extraordinary sessions of the Althing. If the proposal is passed by both houses, the Althing shall be dissolved immediately and a general election be held. If both houses pass the resolution without amendments, it shall be ratified by the President of the Republic and come into force as a constitutional act.

"If the Althing passes an amendment to the status of the church affairs, according to Article 62, it shall be submitted to a plebiscite by secret ballot for acceptance or rejection."

Under Article 81 the Constitution of 1944 became effective as follows:

"This constitutional act comes into force when the Althing so resolves, provided that the act has been passed in a secret ballot by the majority of votes in the country."

### *The Althing*

Under Article 2 of the Constitution the legislative power is jointly vested in the Althing and the President. Under Article 31 the members of the Althing "shall be elected for a term of four years." Under Article 33 all persons both men and women 21 years or more of age, if citizens of Iceland domiciled there for five years may vote; voters must be "of unblemished character and financially responsible." Under Article 34 every qualified voter is "eligible for the Althing." Judges not holding administrative offices are not eligible; thus members of the Supreme Court are not eligible. Under Article 31 the Althing consists of fifty-two members.

<sup>212</sup> FRANKLIN B. SCOTT, *THE UNITED STATES AND SCANDINAVIA* (1950) 322. The communists lost out in their attempt to block the Atlantic Pact and Iceland's cooperation with the nations opposed to Russia. "The Quarter's History—Iceland," (March 1950) 38 *AM. SCAND. REV.* 64.

<sup>213</sup> Gunnar Thoroddsen, "Comments on the Constitution of Iceland," in AMOS J. PEASLEE, *CONSTITUTIONS OF NATIONS*, Vol. II, 179, 182 (1950).

They are chosen in three ways. There is direct election by 21 districts or towns of one member each. Twenty members are chosen from a party list by proportional representation. Finally there are up to eleven compensatory seats to make up the balance between the parties, so that each party has seats in proportion to its popular vote. This scheme represents two purposes: to maintain representation from local constituencies and to represent all the parties according to their voting strength. Under Article 32 the Althing is divided into a lower house and an upper house, although members are elected to the whole Althing as a single body as the Storting is in Norway. The entire Althing after its election chooses one third of its members to serve in the Upper House and the other two-thirds to serve in the Lower House. Under Article 42 finance "bills and supplementary finance bills shall be introduced in the United Althing and passed in three readings." As to most other matters the two Houses sit separately.

As has been seen under Article 31 members of the Althing are "elected for a period of four years." But under Article 34 the "President may dissolve the Althing" and bring on new elections within two calendar months thereafter. Where the Althing approves any change in the Constitution, Article 79 requires an immediate dissolution of the Althing. The Constitution is silent as to prolonging the life of the Althing, although this was done in 1941.

Under Article 49 "No member may be arrested for debt during a session of the Althing, without the permission of the house of which he is a member, nor may be placed under restraint or an action brought against him unless he is found in *flagrante delicto*. No member may be made responsible outside the Althing for statements made by him in the Althing, except with the permission of the house concerned." The records show that such permission has been granted once.

Article 48 expresses a philosophy as to the function of legislators in providing: "Members of the Althing are bound solely by their conviction and not by any orders from their constituents."

Under Article 38 each house may "introduce and pass bills and proposals for resolutions. Each house individually or unitedly may send addresses to the President." Under Article 39 each house "may appoint committees of its members in order to investigate important matters of public interest. The house may grant authority to such committees to demand reports, oral or written, from government officials or private individuals." Under Article 44 "No bill, with the exception of the finance and the supplementary finance bill may be passed without three readings in each house." Under Article 45 if a bill is changed in one of the houses it goes back to the other, and if no agreement is reached "both houses shall meet in a conclave, and the matter is settled by one reading by the United Althing." After the first reading of a bill, it is the custom to refer it to a committee. There are eight committees in each house, and three for the United Althing. Under Article

26 if the "Althing has passed a bill, it should be submitted to the President for approval not later than two weeks after it has been passed, and upon such approval shall be enforced as law."

With respect to temporary or emergency laws, Article 28 provides: "In the event of extreme urgency, the President may issue provisional laws in the interval between sessions of the Althing. Such laws must not, however, be contrary to the Constitution, and they shall always be submitted to the Althing as soon as it reopens.

"If the Althing does not approve a provisional law, it shall become invalid.

"A provisional budget may not be issued if the Althing has passed the budget for the fiscal year."

A single type of law requires a national vote. Under Article 79 "If the Althing passes an amendment to the status of Church affairs, according to Article 62, it shall be submitted to a plebiscite by secret ballot for acceptance or rejection." Prior to the 1944 Constitution there was an advisory vote on the prohibition of import of alcohol in 1908, compulsory national service in 1916, and the repeal of the prohibition law in 1933.

Under Article 42 a "finance bill for the coming fiscal year containing an estimate of the revenue and expenditures of the State shall be submitted to the Althing immediately on reassembling for a regular session." Furthermore such bills "shall be introduced in the United Althing and passed in three readings." Article 44 provides that as to financial bills there need be no separate readings in each house. Under Article 43 the United Althing is to elect three salaried auditors to audit annually "the national revenue and expenditure accounts to ascertain whether the entire revenue has been included and whether any unauthorized disbursements have been made."

### *The Courts*

Article 2 of the Constitution provides: "The judicial power is exercised by the judiciary." Article 59 provides: "The organization of the judiciary cannot be established except by law." The Althing thus has much discretion as to court organization. Perhaps the only limitation is contained in Article 14 providing: "The Althing may impeach ministers for the discharge of their official duties. The court of impeachment has jurisdiction in such matters." Thus far this court has never been made use of.

Article 61 provides: "Judges shall in the performance of their official functions be guided solely by the law. Judges who do not also hold administrative offices cannot be discharged from office except by a judicial ruling, nor may they be transferred to another office against their will except in the event of reorganization of the judiciary. A judge who has reached the age of sixty-five may,

however, be asked to resign from office without reduction of salary." It is the judges of the highest appellate court who are thus protected as they do not hold administrative offices.

The court of last resort is called the *Haerstirettur* or the Supreme Court.<sup>214</sup> There are five members at present. Almost all cases are appealable to this court.<sup>215</sup> The judges of the lower courts are the *sylumenn* in the rural areas and the *baejarfogetur* in the towns. There are twenty-one such judges. They have both civil and criminal jurisdiction. Their judicial work is the smaller part of their work. Most of their time is spent in the collection of taxes and duties, control of the police, and direction of local government. At the capital there are three district judges: one for criminal cases, one for ordinary civil cases, and one who carries out distrains, ejectments, bankruptcy proceedings, and probating of estates. All judges are appointed by the Minister of Justice for an indefinite period. Normally they must retire at 65, but the government may permit them to sit until they are seventy if their health continues good.

In the above cases there is always at least one judge who is a lawyer. There are also a number of special courts where the members are not necessarily all lawyers. Such courts are the maritime and commercial court and the boundaries court. As to these courts two persons are appointed to give judgment along with the regular district judge. In 1938 the *felagsdomur* or court of labor disputes was established with five members. It passes on the interpretation of agreements between employer and employees, the legality of strikes and lockouts, and so on. No appeal lies from its judgments. On the other hand as to ordinary cases both parties may take an appeal from the district court to the Supreme Court.

### *Legal Education*

It seems likely that the future of Icelandic law will be substantially influenced by the fact that Icelandic lawyers now receive their training in Iceland instead of in other nations, as previously was the case. When the University of Copenhagen commenced to offer courses in law,<sup>216</sup> Icelanders went there to study. But when the movement for Icelandic independence commenced after 1830, proposals were made that law study should be made available in Iceland itself. When the first Althing for advisory purposes met in about 1845 Jon Sigurdsson, the great leader in the movement for Icelandic independence, proposed a plan for the founding of a school which among other things would offer legal studies.<sup>217</sup> But no action was taken on his proposal. A theological seminary was

<sup>214</sup> Gunnar Thoroddsen, "Comments on the Constitution of Iceland," in AMOS J. PEASLEE, CONSTITUTIONS OF NATIONS, Vol. II, 179, 186 (1950).

<sup>215</sup> For a discussion of decisions of the Icelandic Supreme Court in 1949 see Arni Tryggvason, "Nagra Rattsfall Fran Islands Haogsta Domstol Ar 1949," (1950) 35 SVENSK JURISTIDNING 950-957.

<sup>216</sup> See Lester B. Orfield, "Danish Law," (1951) 5 MIAMI L. Q. 197, 226-227.

<sup>217</sup> KNUT GJERSET, HISTORY OF ICELAND (1925) 366.

founded in 1847. In 1855 the Althing consented to a petition to the king for the establishment of a law school. Similar petitions were presented by all the subsequent sessions up to 1873, but without result. A medical college was founded in 1876. The Althing which then acquired law making, and not simply advisory power, from 1879 to 1903 ten times passed a law for establishing a law school, but the king declined to ratify. It was thought that the costs of maintaining such a school would be a burden on the country and that competent professors could not be secured.<sup>218</sup> The proposal, which was repeated in 1903, was not pressed until the new Icelandic minister had been selected, and it was the second of the laws which were presented by such minister to the king for approval. The law school opened in the fall of 1908. When the University of Iceland was founded in 1911, the law school became a part thereof.<sup>219</sup> The first graduates took their graduation examinations in the spring of 1912. Nearly all the lawyers now practicing in Iceland had their schooling there.

As of 1914 the law school had three professors. An act of 1914 made these professors extraordinary assessors of the appellate court to be called in order of appointment to fill out the court in cases of incapacity of ordinary assessors.<sup>220</sup> In 1915 Einar Arnorson, who had taught in the law school from its beginning in 1908, became Minister for Iceland, that is to say, the prime minister.<sup>221</sup> He had written several books in the relation of Iceland to Norway and Denmark and challenged the view of the great Danish authority on Danish Constitutional Law that Denmark had wide authority to control Icelandic affairs.

The law and political science faculty at the University in Reykjavik in 1950 consisted of five professors, two of them teaching socio-economic subjects.<sup>222</sup> There are also two lecturers on legal subjects. The professors of law are: Olafur Larusson, born in 1885, appointed in 1919 (Contracts, Damages, Obligations, Legislation, Admiralty, Corporations, and Legal History), Olafur Johanneson, born in 1913, appointed in 1948 (Civil and Criminal Procedure, Constitutional Law, Administrative Law), Armann Snaevarr, born in 1919, appointed in 1948 (Jurisprudence, Law of Persons, Family Law, Inheritance Law and Criminal Law.) The lecturers are: Theodor B. Lindahl, born in 1898 (Legal Problems) and Hans G. Andersen, born in 1919, (International Law, Conflict of Laws). The distribution of subjects is determined by the faculty. The dean for 1949 to 1950 is Professor Johanneson. The average law student spends five years at the University. There are no tuition fees.

<sup>218</sup> Professor Gjerset offers the following explanation: "The Danish Government had long regarded Iceland as a province which was to be connected as closely as possible with the realm. All efforts to provide home training for students of law was therefore opposed as this would lessen Danish influence over Icelandic officials." *HISTORY OF ICELAND* (1925) 366-367.

<sup>219</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 424. See Alexander Johanneson, "The University of Iceland," (Dec. 1950) 38 *AM. SCAND. REV.* 349.

<sup>220</sup> Axel Teisen, "Iceland Legislation," (1916) 2 *A. B. A. J.* 267.

<sup>221</sup> KNUT GJERSET, *HISTORY OF ICELAND* (1925) 443-446.

<sup>222</sup> (1950) 35 *SVENSK JURISTTIDNING* 388.

## BIBLIOGRAPHY OF ICELANDIC LAW

## A. REFERENCES IN ENGLISH

*The American Scandinavian Review.* This publication contains four reviews each year of Icelandic affairs.

Bjornson, Sveinn, *The Kingdom of Iceland. Some Remarks on its Constitutional and International Status*, Copenhagen, 1939. The author has been President of Iceland since 1944.

Briem, Helgi P., *Iceland and the Icelanders*, Princeton, N. J., 1945. Published by the American-Scandinavian Foundation.

Bryce, James, "Primitive Iceland" in *Studies in History and Jurisprudence*, Vol. I. pp. 312-358, London, 1901.

Clark, Austin H., *Iceland and Greenland*, 1943.

Chamberlain, William C., *The Economic Development of Iceland Thorough World War II*, New York, Columbia, 1947.

Clinton, George, Jr., "Iceland Lawsuit of the Eleventh Century", Oct. 1928, 2 *Lincoln L. Rev.* 6-13, Buffalo, N. Y.

Economic Cooperation Administration pamphlet "Country Studies" on Denmark, Norway, Sweden, and Iceland (Washington: ECA, 1949).

Einarsson, Stefan, *History of Icelandic Prose Writers 1800-1940*, Ithaca, Cornell University Press, 1948. The author is professor of Scandinavian philology at Johns Hopkins University.

Einarsson, Stefan, *Icelandic* (1949) This book is the most complete grammar and all around study of the Icelandic language.

Eldjarn, Kristjan, "Romans in Iceland" (1951) 39 *American Scandinavian Review* 123-126.

Gjerstet, Knut, *History of Iceland*. New York: 1924. This volume is out of print. It is the standard history of Iceland published in English. The author was a professor at Luther College, Decorah, Iowa.

Gjerstet, Knut, *History of the Norwegian People*, New York, 1927. See especially Vol. I, pp. 137-142, 189-194, 434-438; Vol. II, pp. 14-15, 107, 139-142, 237-238, 415.

Grimsen, G., "Iceland and Its Relation to the North American Continent", February 1942, 5 *Lawyer* 15-18, Brooklyn, N. Y. The author is a state judge in a trial court of general jurisdiction in North Dakota.

Grimson, G., and Johnson, Svernbjorn, "Iceland and the America. Present Status of the Northern Island in International Law—discussion by two Distinguished Legal Scholars born in Iceland", June 1940, 26 *A.B.A.J.* 505-509.

Heckscher, Eli, Keilhau, Wilhelm, Cohn, Einar, and Thorsteinsson, T., *Sweden, Norway, Denmark and Iceland in the World War*, New Haven: Yale, 1930.

Hermansson, Halldor, *Catalogue of Icelandic Collection bequeathed by Willard Fiske*. Ithaca, N. Y.: 1914 and 1927.

Hermansson, Halldor, *Modern Icelandic, an Essay*, Ithaca, N. Y. (1919).

Hertzberg, Ebbe, in *A General Survey of Continental Legal History* (1912) 533-576. The author was a leading Norwegian student of early Scandinavian law.

Holme, J. G., *Icelanders in the United States*, 1921, New York.

Johannesson, Alexander, "The University of Iceland", (December 1950) 38 *AM. SCAND. REV.* 349-354. The author is President of the University of Iceland.

Johnson, Skuli, *Iceland's Thousand Years*, Winnipeg, 1945.

Johnson, Sveinbjorn, *Pioneers of Freedoms An Account of the Icelanders and the Icelandic Free State*, 874-1262, Boston, 1930. The author was a professor of Law at the University of Illinois.

Larsen, Karen, *A History of Norway*, Princeton University Press, New York, 1948. See especially 55-58, 84, 96, 134, 169, 233, 326, 350, 409. The author is professor of history at St. Olaf College, Northfield, Minnesota.

Mallet, P. H., *Northern Antiquities* (1847) 276-396 (Percy Translation).

Munch-Petersen, H., "Main Features of Scandinavian Law" (1927) 43 *L. Q. REV.* 366-377.

Peaslee, Amos J., *Constitution of Nations*, Vol. II, "Icelandic Constitution," pp. 171-178.

Repp, Thorleifr Gudmandarson, *A Historical Treatise on Trial by Jury, Wager of Law, and other Co-ordinate Forensic Institutions formerly in use in Scandinavia and in Iceland*, Edinburgh, 1832.

Rothery, Agnes, *Iceland, New World Outpost*, Viking Press, 1948.

Smith, Paul A., "ICAO Conference on Air Navigation Services in Iceland", (Feb. 6, 1949) *DEPT. STATE BULL.* 164-166.

Stefansson, *Denmark and Sweden with Iceland and Finland*, 153-168, New York, 1917. The author was Lecturer in Icelandic at King's College, London.

Teisen, Axel, "Scandinavia Legislation and Bibliography of Law" (1915) 1 *ABAJ* 160-162, (1916) 2 *ABAJ* 267-275.

Thordarson, Bjorn, *Iceland Past and Present*, London 1945. The author has been Prime Minister in Iceland.

Thorddsen, Gunnar, "Comments on the Constitution of Iceland" in PEASLEE, CONSTITUTION OF NATIONS, Vol. II, 179-187 (1950). The author was secretary of the commission drafting the 1944 Constitution, and is a member of the Althing, and a professor of government at the University of Iceland.

Thorsteinsson, Thorsteinn, *Iceland* 1936, 3rd ed., 1936, Reykjavik.

Weigert, Hans, "Iceland, Greenland and the United States" on FOREIGN AFFAIRS (Oct. 1944) 112-122.

Zimmerman, J. L., "A Note on the Occupation of Iceland by American Forces" (March 1947) 62 POL. SC. Q. 103-106.

## B. REFERENCES IN ICELANDIC

Nordal, Sigurd, *Islenzk Menning*. Reykjavik, 1942. There are two more volumes to be published. It is the best critical evaluation of Icelandic culture.

Sigurdson, Jon, *Diplomatiorium Islandicum* (1857-1876).

Sigurjonsson, Arnor, *Islandíngasaga*, Akureyri, 1948. This is the most up-to-date history of Iceland.

## C. REFERENCES IN DANISH

Arnason, Jon, "*Historisk Indledning til den gamle og nye Islandske Rættergang*" (1762).

Arnorsson, Einar, "Den ny islandske lov av Besvangrelse og Afbrydelse of Svangerskab", (1936) NORDISK TIDSSKRIFT FOR STRAFFERET 1-32.

Finsen, V., *Den islandske Fristats Institutioner*, Copenhagen, 1888.

Finsen, V., *Om de islandske love i Fristatstiden*, Copenhagen, 1873.

Gragas, *Islandernes Lovbog i Fristatens Tid*. Translated into Danish by V. Finsen, 4 Vols., Copenhagen, 1870.

## D. REFERENCES IN SWEDISH

Larusson, Olafur, *Den islandske rattens utveckling sedan år 1262* (1950) 35 SVENSK JURISTTIDNING 241-259. The author is professor of law at the University of Iceland.

Tryggvason, Arni, "Nagra Rattsfall Fran Islands Hogsta Domstol ar 1949", (1950) 35 SVENSK JURISTTIDNING 950-957. The author is a member of the Supreme Court of Iceland.

## E. REFERENCES IN GERMAN

Hermann, Paul, *Island, das Land und das Volk* (1914) Leipzig and Berlin.

Kose, Olaf, *Islandkatalog der Universitätsbibliothek Kiel und der Universitäts- und Stadtbibliothek Köln*, Kiel: 1931.

Maurer, Konrad von, *Die Entstehung des inländischen Staates und seiner Verfassung*, Munich 1874. The author, born in 1823, was a professor at the University of Munich and a leading student of early Icelandic and Norwegian law.

Maurer, Konrad von, *Die Rechtsrichtung des alter islandischen Rechtes*, Munich, 1887.

Maurer, Konrad von, *Island von seiner ersten Entdeckung bis zum Untergange des Fristaates*, Munich: 1874.

Maurer, Konrad, *Vorlesungen über alternordische Rechtsgeschichte* (1909-1910) Munich, Vols. 4 and 5. These volumes represent Maurer's revised ideas concerning Iceland.

Schweitzer, Ph., *Island Land und Leute*, Leipzig and Berlin (about 1890).

## F. REFERENCES IN FRENCH

Gregersen, *L'Islande, son statut a travers les ages*, Paris: 1937.